Mark Boguslavsky

THE U.S.S.R. AND INTERNATIONAL COPYRIGHT PROTECTION

Progress Publishers

This book is based on Mark Boguslavsky's monograph *The Problems of Copyright in International Relations* (Moscow, 1973) supplemented by the author and adapted for the English edition.

The monograph evoked great interest in the scientific community in the Soviet Union and elsewhere. About twenty reviews of the monograph were published in the USSR, Bulgaria, Hungary, the GDR, Poland, Czechoslovakia, France, Switzerland, and the FRG.

The author hopes that the book will be of interest not only to lawyers but also to authors and translators of scientific, literary and artistic works, as well as readers concerned with the problems of cultural cooperation between East and West.

Mark Boguslavsky

THE U.S.S.R. AND INTERNATIONAL COPYRIGHT PROTECTION



Progress Publishers
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CONTENTS

	Page
THE AUTHOR'S FOREWORD TO THE ENGLISH EDITION	7
INTRODUCTION	10
Chapter 1. THE GENERAL PROBLEMS OF INTERNATIONAL COPYRIGHT PROTECTION	17
1. The Territoriality of Copyright	17
2. The Types of International Copyright Protection	23
3. International Book Exchange and Copyright Protection	37
4. Copyright and the Problems of the Developing Countries	43
5. The Impact of Technological Progress on International Copyright Protection	55
Chapter 2. A BRIEF HISTORY OF INTERNATIONAL COPYRIGHT PROTECTION	68
1. From the "Literary Congress" of 1858 to Diplomatic Conferences of the 20th Century	68
2. Russia's Participation in International Copyright Protection	79
Chapter 3. MULTILATERAL INTERNATIONAL COPYRIGHT CONVENTIONS	93
1. Participation of States in Multilateral Conventions	93
2. The Main Problems of Convention Protection of Copyright and Their Resolution in the Berne and Universal Conventions	98
Chapter 4. SOVIET COPYRIGHT LAWS AND INTERNATIONAL ARRANGEMENTS	134
1. A General Outline of Soviet Copyright Law	134
2. The Universal Copyright Convention and the Soviet Copyright Law	144
Chapter 5. THE COPYRIGHT OF FOREIGN NATIONALS AND THE PROBLEMS OF USING WORKS OF FOREIGN AUTHORS IN THE USSR	159
1. The Copyright Status of Foreign Nationals	159
2. The Legal Status of Protected Works of Foreign Authors Published in the USSR	163
3. The Legal Status of Works of Foreign Authors Published Abroad and Protected in the USSR	166
4. The Problems Involved in the Use of Unprotected Works of Foreign Authors	179

Chapter 6. THE LEGAL PROBLEMS OF THE PROTECTION AND USE OF WORKS OF SOVIET AUTHORS ABROAD 183

1. Soviet Legislation on the Protection of Works of Soviet Authors Abroad 183
2. Protection of Works of Soviet Authors Abroad Under the Provisions of International Treaties and Agreements 186
3. The Legal Forms of the Use of Works of Soviet Authors Abroad with the Participation of Soviet Organizations 192
4. Protection of Soviet Authors by Foreign Domestic Legislation 207

Chapter 7. THE PROBLEMS OF COPYRIGHT IN CO-OPERATION BETWEEN THE USSR AND OTHER SOCIALIST COUNTRIES 217

1. The Importance of Cultural and Scientific Co-operation Between the USSR and Other Socialist Countries 217
2. Bilateral Arrangements for Reciprocal Copyright Protection Between the USSR and Other Socialist Countries 221
3. The Questions of Copyright in Scientific Works Created in the Process of Scientific and Technical Co-operation 233

APPENDICES 243

Berne Convention for the Protection of Literary and Artistic Works 245
Universal Copyright Convention 273
Soviet Copyright Legislation 289

THE AUTHOR'S FOREWORD TO THE ENGLISH EDITION

The problems of copyright protection of foreign authors in Russia, of her attitude to international copyright protection evoked keen interest in the West since long ago. As far back as 1836 the French envoy addressed a special inquiry about this matter to the great Russian poet Alexander Pushkin. The latter answered that reprinting of foreign books in Russia was not and could not be forbidden.

This invariable interest in the protection of copyright in Russia was excited by Russia's vast book market and the steady popularity of new Western books among Russian readers. That was by no means due to an absence of national literature. The popularity of Pushkin himself, as well as of other Russian and world classics such as Tolstoy and Dostoyevsky, Turgenev and Chekhov, is a matter of common knowledge. They are among the world's most frequently translated authors to this day.

The Great October Socialist Revolution of 1917 opened up unlimited opportunities for disseminating the finest works of world literature and bringing mankind's cultural heritage within reach of the multimillioned masses throughout the country. During its sixty-year history the Soviet Union has become a great power in the book-publishing field. The Soviet people are known as the world's leading nation of readers.

During Soviet years more than 73,000 translated foreign books alone have been brought out in a total printing of about 3,000 million copies. Many foreign authors have been published in impressions they might not have dreamed of in their homelands. Nevertheless, books are still

in short supply, and the growing public demand for literature, including translations, is never fully satisfied by publishers.

Needless to say, the vast Soviet book market is not the only factor accounting for the Western interest in copyright protection in the USSR. Western films are also widely shown in the USSR, and foreign music and art are quite popular.

The question of Soviet accession to international copyright conventions was repeatedly raised in the West. Suffice it to recall Governor Adlai Stevenson's mission to Moscow in 1958 and the campaign in the Western press concerning Arthur Conan Doyle's editions and the production of *My Fair Lady*.

Neither tsarist Russia nor the Soviet Union (until 1973) were parties to multilateral copyright agreements. In 1973 the USSR joined the Universal Copyright Convention of 1952. This opened a new chapter in Soviet relations with the West in the copyright field.

Why had the Soviet Union abstained from participation in copyright conventions before? What had motivated it to join the Universal Copyright Convention of 1952 rather than the Berne Convention for the Protection of Literary and Artistic Works of 1886? I have attempted to answer these questions in the present book.

This, however, has not been my only aim. Soviet copyright is widely discussed in the West and far from always objectively, to put it mildly.

The rights of authors are protected under the new Soviet Constitution. In addition, the USSR has an extensive system of copyright norms and rich experience in applying them. There is an organization specializing in copyright protection—the Copyright Agency of the USSR (VAAP), which has a record of active and successful work.

I have sought to familiarize the reader with the main principles of Soviet copyright law, and the amendments made in it in connection with the USSR's accession to the Universal Copyright Convention.

International copyright agreements are analyzed primarily from the viewpoint of the USSR's participation in them. Although the book is intended mainly for copyright lawyers, I hope that it may be of interest to authors of scientific, literary and artistic works, translators and,

finally, readers who want to know more about cultural exchanges between East and West.

As the book deals with the legal problems of translation, I avail myself of this opportunity to express my profound thanks to the translator, whose noble work has made it possible to offer this book to English readers.

Moscow

September 1977 *Mark Boguslavsky*

INTRODUCTION

One of the numerous definitions of the 20th century is "the translation age". This is how our age was called by Pierre-François Caillé, a French public leader, one of the founders of the International Federation of Translators (FIT). This definition is quite reasonable.

Indeed, a writer's book or a scientist's monograph produced in one country may later be republished in many other countries. The volume of translated literature is steadily growing. Rapid scientific and technological progress, the development of modern technical facilities such as radio and television broadcasting, and cinematography have resulted in a worldwide dissemination of works of national literature and art.

Our century is also the information age.

The "information explosion" has entailed a broad diffusion of information of varied kinds, which cannot be confined within national territory.

International cultural exchange is called upon to serve humane ideals, to promote peace, trust, and friendship among nations. It is on this principle that the Soviet Union encourages cultural exchange, affording Soviet people broad opportunities to learn about the history, culture and present life of other nations.

This fundamental principle is proclaimed in the new Constitution of the USSR. Article 46 reads: "Citizens of the USSR have the right to enjoy cultural benefits. This right is ensured by broad access to the cultural treasures of their own land and of the world ... by expanding cultural exchanges with other countries."

In compliance with the provisions of the Final Act of the Conference on Security and Co-operation in Europe, the Soviet Union has taken additional measures to widen cultural exchange, in particular, the exchange of books, films, and other works of art.

The Helsinki Conference in itself was an important step towards perpetuating the principles of peaceful coexistence and setting up relations of equal co-operation between states with different social systems. The Conference laid the groundwork for a substantial widening and stimulation of co-operation between European states in the fields of science and technology, culture, education, information, and other fie'ds.

The Final Act of the Conference referred, in particular, to the effective role played by international copyright conventions in developing co-operation between states with different socio-economic systems. Its section devoted to the available opportunities for the continued improvement of scientific and technical co-operation points out the need to ensure the protection of rights in intellectual and industrial property and to supply information concerning such rights.

Naturally, the European Conference stressed the significance of international copyright conventions in determining the conditions for developing co-operation in the humanitarian and other fields. In the section of the Final Act on cultural co-operation and exchanges the signatory states declared their determination to display concern for the complete and effective application of the international agreements and conventions for the protection of copyright and dissemination of cultural values to which they were party or would accede in the future. It should be emphasized that the application of copyright conventions is regarded in this section as a measure intended to contribute to improving the available opportunities for the exchange and dissemination of cultural values by convenient means.

The participating states also assumed a commitment to facilitate wider mutual access of all to the achievements —works, experience, performing arts—in various fields of culture in their respective countries and, in particular, to promote, in full conformity with the international copyright conventions to which they are party, interna-

tional contacts and ties between authors and publishers, as well as other cultural institutions, having in mind fuller mutual access to cultural achievements.

The above references to the materials of the Conference on Security and Co-operation in Europe vividly testify that in the present international situation, when, notwithstanding all the obstacles standing in its way, detente is increasingly materializing, international copyright conventions are becoming an effective instrument for co-operation. The efficacy of these international agreements—both multilateral and bilateral—is dependent primarily on how much they facilitate equal cultural, scientific and technical co-operation, wider mutual information and the use of cultural values of different countries.

In compliance with the principles of the Peace Programme it is implementing, the Soviet Government declared in 1973 the accession of the USSR to the Universal (Geneva) Copyright Convention.

This decision was a step to promote cultural relations between states.

The accession of the USSR to the Convention is aimed primarily at stimulating international cultural co-operation. It affords new opportunities for making the finest achievements of Soviet culture available to foreign readers and the achievements of world culture to Soviet readers.

The participation of the USSR in international copyright protection contributes to wider cultural exchanges between nations and greater mutual understanding.

The Soviet Union favours an all-out expansion of cultural relations, with due respect for the laws, customs and traditions of each country.

Cultural and scientific co-operation, wider ties and information exchange must combine with full observance of the principles of sovereignty and non-interference.

International cultural co-operation can be fruitful only if the principles of equality, mutual respect, non-interference in the affairs of other countries and the standards of international law are strictly observed. Characteristically, the World Conference on Cultural Policy Problems held in Venice in 1970, which was attended by representatives of 86 countries, including the USSR, recommended, in particular, that international cultural co-operation should be based on the fundamental principles of

international law, i.e., respect for national sovereignty and independence, equality of rights, non-interference in internal affairs and mutual benefit.

Under the present conditions of international cultural, scientific and technical co-operation the accession of the USSR to the Universal Copyright Convention of 1952 is the most preferable form of its participation in international copyright protection. It makes it possible to regulate the relations of the Soviet state in the copyright field with many countries simultaneously.

At present, socialist states—Bulgaria, Cuba, Czechoslovakia, the GDR, Hungary, Poland, the USSR, and Yugoslavia—are parties to the International Copyright Convention of 1952, while Bulgaria, Czechoslovakia, the GDR, Hungary, Poland, and Yugoslavia are signatories to the Berne Convention for the Protection of Literary and Artistic Works.

The active participation of the socialist countries in the multilateral system of international copyright protection contributes to its effectiveness in the materialization of detente.

For all the importance of multilateral agreements the USSR may choose to conclude a bilateral agreement with another country.

The present work contains a comparative analysis of the multilateral Universal and Berne conventions, the bilateral agreements for reciprocal copyright protection concluded between the USSR and other socialist states, and the practices in their application.

The attention is focussed on the problems of copyright in literary and scientific works. This is attributable to the importance of books and other printed matter in the modern world despite the advent of other technical facilities of information diffusion.

Books by foreign authors have been published in the Soviet Union since the early years of the Great October Socialist Revolution. Herbert Wells, who visited Moscow and Petrograd in 1920, wrote: "...In this strange Russia of conflict, cold, famine and pitiful privations there is actually going on now a literary task that would be inconceivable in the rich England and the rich America of today.... In starving Russia hundreds of people are working upon translations, and the books they translate are being

set up and printed, work which may presently give a new Russia such a knowledge of world thought as no other people will possess."[1]

In the Soviet Union works of authors from 136 countries of the world have been published, and books are printed in 151 languages of the USSR and other countries.

The USSR has long been leading the world in the publication of translations. According to UNESCO, the USSR brings out five times as many translations as Britain and twice as many as the United States, France, and Japan.

From 1971 to 1976 almost 10,000 books were translated and published in a total of 360 million copies. In the postwar period alone, about 7,000 works by American authors and 4,500 by British and French authors respectively were published in the USSR. More than 300 works of American authors and 150 works of British authors are translated into the languages of the USSR every year.

Characteristic of the postwar period was a stable disproportion in the field of cultural exchange. Since 1945 more than 15,000 books by American, French, West German and British authors have been published in the USSR, which is six times the number of Soviet books published in these countries over the period. Between 1946 and 1972 only 450 books of Soviet authors were translated in the USA, as against 6,305 books by American authors in the USSR. Even if a modern Soviet author is published in the West at all the impression is usually small—not more than 5,000 copies. By contrast, most American authors, for instance, are published in the USSR in printings of 100,000 to 500,000 copies.

The current disproportion in the cultural exchange between the socialist and the Western countries is causing obvious harm to the cultural interests of millions of readers in the West. This disproportion, however, does not affect the rates of increase in the publication of foreign literature in the USSR in accordance with the principles and provisions of the Universal Copyright Convention.

The activities of VAAP (Copyright Agency of the USSR) established in 1973 have demonstrated that the

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[1] H. G. Wells, *Russia in the Shadows*. Hodder and Stoughton Limited, London, pp. 47-48.

USSR's accession to the Convention had led to a widening of business ties between Soviet organizations and hundreds of publishers and copyright organizations in more than sixty countries of Europe, North and South America, Asia, and Africa.

This circumstance has in turn enhanced the interest in the problems discussed in the present book and made its publication a matter of urgency.

A LIST OF ABBREVIATIONS

VAAP	Vsesoyuznoye agentstvo po avtorskim pravam (Copyright Agency of the USSR).
BIRPI	Bureaux internationaux réunis pour la protection de la propriété intellectuelle (International Bureau for the Protection of Intellectual Property).
WIPO	World Intellectual Property Organization (Organisation Mondiale de la Propriété Intellectuelle, OMPI).
CISAC	Confédération Internationale des Sociétés d'Auteurs et Compositeurs (International Confederation of Authors' and Composers' Societies).
Bull. du dr. d'aut.	Bulletin du droit d'auteur. UNESCO. Paris (Copyright Bulletin).
Clunet	Journal du droit international. Paris (Journal of International Law).
Dr. aut.	Le Droit d'auteur. Genève (Copyright).
GRUR, Int.	Gewerblicher Rechtsschutz und Urheberrecht. Internationaler Teil. Verlag Chemie. GmbH Weinheim/ Bergstr.
Rev. crit. de dr. int. pr.	Revue critique de droit international privé. Paris.
UFITA	Archiv für Urheber-, Film-, Funk- und Theaterrecht. München.
RIDA	Revue internationale de droit d'auteur.

Chapter 1

THE GENERAL PROBLEMS OF INTERNATIONAL COPYRIGHT PROTECTION

1. The Territoriality of Copyright

The term "copyright" has a dual meaning. Copyright is interpreted as an institution of law, as law in the objective sense,[1] and it may also mean a right vested in the author of a work or his assign (copyright in the subjective sense).

Every state promulgates its own standards of copyright law in accordance with the goals and tasks it intends to pursue.

In the capitalist countries copyright legislation proceeds from the premise that copyright means the exclusive right in a work. This right is owned by the author who may assign it to a capitalist enterprise, which acquires thereby the monopoly right of using and disposing of the work. A publisher is an entrepreneur who makes large investments in book publication. Works of literature, science and art are commodities exchanged for money, the author is the commodity producer and the capitalist is the commodity owner deriving profit from the work as-

[1] In domestic legislation and international agreements different terms are current: "Droit d'auteur" (Fr.), "Urheberrecht" (Ger.), "derecho de autor" (Sp.). The French term "droit d'auteur" corresponds to the English term "copyright" (literally "a right to copy") which originated in Anglo-American law at a time when copying was nearly the only means of utilizing an author's creation (see S. P. Ladas. *The International Protection of Literary and Artistic Property*, Vol. I. The MacMillan Co., N.Y., 1938, p. 2).

A reflection of the proprietary theory of copyright in bourgeois jurisprudence is the term "literary and artistic property" (*la propriété littéraire et artistique*), which is often applied in the doctrine, as well as in certain international agreements. For greater detail see P. Recht. *Le droit d'auteur, une nouvelle forme de propriété. Histoire et théorie.* Paris, 1969.

signed by the author under a publishing contract or by any other legal means.

In socialist society authors of literary, scientific and artistic works place them at the disposal of publishing houses, film studios and other socialist enterprises for the purpose of their broad dissemination. Copyright is called upon to ensure the widest possible diffusion of such works of literature, science and art which serve the construction of socialist and communist society. Copyright in a socialist state is characterized by harmony between the interests of the author and all society. It protects the rights of the author who has created the work, both his moral and property rights.[1]

The difference between the copyright laws of socialist and capitalist countries does not rule out the possibility of co-operation between states with opposite socio-economic systems, reciprocal extension of copyright protection to works of their nationals.

In contrast to other subjective rights, copyright granted in one country is not automatically accorded protection in another. This principle is valid for relations between all states and is attributable to the *territoriality of copyright*. This principle applies to literary, scientific, musical and other works and is as important for copyright as it is for a right in an invention, an industrial sample or a trademark.[2] All these rights are granted by national legislation and are limited to the confines of a definite state.

This distinguishes copyright, say, from a property right. A person who has acquired a title of property in one country is recognized on the basis of this title as the owner of this property in all other countries. Subjective

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[1] For greater detail see M. V. Gordon. *Soviet Copyright Law.* Gosyurizdat Publishers, 1955; V. I. Serebrovsky. *The Problems of Soviet Copyright Law.* USSR Academy Press, 1956; B. S. Antimonov, Y. A. Fleishits. *Copyright Law.* Gosyurizdat Publishers, 1957; O. S. Ioffe. *The Fundamentals of Copyright Law.* Znaniye Publishers, 1969. (All in Russian.)

[2] L. A. Lunts. *A Course in International Private Law.* Special Part. Yuridicheskaya Literatura Publishers, 1975; I. S. Peretersky, S. B. Krylov. *International Private Law.* Gosyurizdat Publishers, 1959; about rights in inventions see M. M. Boguslavsky. *Problems of Patent Law in International Relations.* USSR Academy Press, 1962. (All in Russian.)

copyright, however, is not valid outside the state where it arose. In the same way, a definite right arising from liability relations in one country is recognized in another country and, in compliance with the collision rules applied in that country, may be governed by foreign law, for instance, the law of the country where the contract was made.

As regards copyright the case is somewhat different. In every state it is protected in principle by its domestic law on the basis of national legislation.

The territorial principle in the field of copyright and patent law was established as far back as the feudal period: beginning from the 15th century—and in isolated cases even before that time—the rights of authors were protected by privileges issued by the sovereign for each invention, literary or artistic work to define the range of rights granted thereby. A privilege was valid in the territory of the state of issuance. After the French bourgeois revolution the system of privileges was gradually abolished. However, the territorial character of corresponding rights granted under national copyright or patent law has remained.

The right in a literary work and the right in an invention arise from some legal facts in accordance with the norms of copyright, patent or invention law in a given country. The only difference is as follows. The right in an invention is granted upon its recognition by the state as certified by an instrument of protection (a patent or an author's certificate), while a copyright arises, as a rule, from the very fact of creating a work, if it conforms with the provisions of the copyright law. In certain countries (for instance, the United States)[1] it may be required to register a work with a specialized government agency, to deposit a copy or comply with other formalities.

The Western literature often refers to the fact that a state will protect only such copyrights it has itself granted,[2] although the system of copyright privileges has

[1] For greater detail see S. P. Ladas. *Op. cit.*, Vol. II; A. Françon. *La propriété littéraire et artistique en Grande-Bretagne et aux Etats-Unis. Étude critique.* Paris, 1955.

[2] See, in particular, M. Wolff. *Private International Law.* Oxford University Press, London, 1945, p. 558; E. Ulmer. *Urheber- und Verlagsrecht.* Springer-Verlag, Berlin-Göttingen-Heidelberg, 1960; L. Raape. *Internationales Privatrecht.* Frankfurta. M., 1955, S. 637.

long been abolished. Today this formula is interpreted to mean tnat the author's rights are inconceivable without state protection. The law stipulates the time of emergence and content of copyright. This also implies protection by the law exclusively within the territory of its operation.

A right granted by national law is effective in principle within national territory. Its protection in another country is conditional on the latter's domestic law. Such is the territorial limitation of copyright. No state can protect by its domestic law a copyright outside its territory.

In the science of private international law the territorial limitation of copyright is universally accepted.[1]

The eminent Swiss lawyer Alois Troller sees the significance of the territorial limitation of the right in intellectual property in that "the content of the right to a non-material benefit must be prescribed by the law of the state in whose territory its owner can preclude all other persons deriving commercial profit from this benefit. The principle of territoriality allows the application in accordance with its content of the law of the country where protection is claimed".[2] In A. Troller's theory, in contrast to the material law, copyright is localized in accordance with its economic function. Copyright is confined to the territory in which its use by non-owners is forbidden.[3] The emphasis is thus laid on the use of the work, i.e., protection of the interests of the persons entitled to such use.

What are the essence and forms of expression of the principle of territoriality? First, it implies that protection accorded to a copyright owner in any state is based exclusively on the law of that state. This law defines, in particular, the range of works under protection. Further, the conditions of the origination, extent and termination of rights correspond to the standards of this law. From

[1] M. Wolff. *Op. cit.*, § 521; A. Troller. *Das internationale Privat- und Zivilprozeßrecht im gewerblichen Rechtsschutz und Urheberrecht.* Basel, 1952, S. 14; E. Ulmer. *Urheber- und Verlagsrecht*, S. 70; L. Raape. *Op. cit.*, S. 637; H. Batiffol. *Traité élémentaire de droit international privé.* Paris, 1959, p. 576.

[2] A. Troller. *Das internationale Privat- und Zivilprozeßrecht...*, S. 48.

[3] *Ibid.*, S. 67.

the principle of territoriality it is inferred that copyright violations come under the jurisdiction of domestic law. This law determines a fact of violation, the mode of protection, liability, etc. This does not imply, however, that foreign law cannot be applied to a violation of copyright in another country. In such instances, as Prof. Ulmer, a West German copyright expert, points out, the collision principle applies, whereby the copyright law of the state in whose territory an infringement took place governs the mode of restitution.[1]

Troller presents a circumstantial analysis of the territorial limitation of "the rights to non-material benefits".[2] As he reasonably asserts, to explain the principle of territoriality it is not enough to indicate that laws on "non-material benefits" are limited territorially. Such explanation does not yet unveil the essence of the matter, since any law is effective within the territory of the state which has adopted it, and any subjective right emanating from it can be enforced only within this territory. Troller maintains the view that rights granted in any country are independent of rights granted in another. Their recognition by the law of the state is what is of crucial importance. The existence of an identical right in the same work in another country is irrelevant. The owner of the right may be granted identical rights in other countries on the basis of identical factual circumstances, but these rights will be independent of one another.

In Troller's opinion, the principle of territoriality in the narrow sense means that the law of the state governs the origination, termination and scope of the exclusive rights to non-material benefits quite independently without reference to foreign law.[3]

Speaking of this, one should note the difference between the origination of subjective rights in inventions and in works protected by copyright. For the right in an invention to be or not to be recognized the existence of a right in an identical or similar invention abroad is essential,

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[1] F. Ulmer. *Urheber- und Verlagsrecht*, S. 72.

[2] A. Troller. *Immaterialgüterrecht*, Bd. I. Basel, 1968, S. 148-153.

[3] *Ibid.*, S. 152-153. The provisions of individual conventions (primarily that adopted at Montevideo) which refer to the law of the country of origin of a work is an exception to the rule.

since it deprives the invention claim made in a given country of the required degree of novelty. The existence of a copyright in a definite work in one country, however, will have no effect on the granting of copyright in that work in another country. And conversely, the existence of such copyright in one country will not entail its automatic protection in another country.

What has been said about the territorial limitation of copyright by no means implies the admissibility of plagiarism, piracy of works of foreign authors. Plagiarism has been condemned by law and morals since antiquity.[1] The great Russian scientist Mikhail Lomonosov wrote in his time: "The sine qua non for a journalist is to know that nothing can be more disgraceful for him than to steal from his colleagues their ideas and judgements and to appropriate them to himself as if they were his own, though he hardly knows the titles of the books he has preyed upon."[2]

The absence in international law of a norm obligating a state to extend its protection of copyright to works published or created outside its territory is also attributable to the territoriality of copyright. Every state lays down the conditions for such protection. Therefore, the term "international copyright protection" which is universally accepted in the literature is extremely conventional.

The conclusions to be drawn from an analysis of the principle of territoriality are as follows:

1. An author's right in his work is accorded protection in any state irrespective of whether that work is protected in another state;
2. Protection of a copyright in one country does not affect its protection in another country;
3. Copyrights granted in different states are independent of one another;
4. Protection of a copyright is limited to the territory of the state which has granted it;
5. The law of each state prescribes the conditions of granting, the scope and termination of a copyright; no reference to foreign law is made, as a rule.

[1] *Plagiat.* Frankfurt a. M., 1959; Z. Algardi. *Il plagio letterario e il carattere creativo dell'opera.* Milano, 1966.

[2] M. V. Lomonosov. *Complete Works*, Vol. III. USSR Academy Press, 1952, p. 231 (in Russian).

2. The Types of International Copyright Protection

Literary, scientific and artistic works translated into other languages and disseminated by means of various technical facilities of distribution and reproduction become a cultural asset of all countries. The finest works of literature of every nation enrich world literature. The practical limits of using such works, in contrast to the legal limits, are infinite.

The territorial limitation of copyright can be and is being overcome, as we shall try to demonstrate below, by virtue of definite economic conditions. The owners of these rights—publishers, sound-recording and broadcasting studios, and other proprietors of the distributing facilities of the mass information media — have vested interest in this field. Authors in all countries also need international protection for their rights.

With the existence of the sovereign equality of states the territorial limitation of copyright can be overcome only if respect is displayed for the prerogative of every state to prescribe the conditions of protection of copyright of foreign nationals in accordance with its cultural and economic policy.

Three methods whereby a copyright originally granted in one state is accorded protection in another are known in international practices: (1) multilateral copyright agreements; (2) bilateral copyright agreements; (3) reciprocal copyright protection.

Historically, foreign authors were originally accorded protection on condition of reciprocity. The principle of reciprocity was stipulated in domestic legislation, though in individual countries (for instance, in France under the decree of 1852) foreigners were protected without reciprocity. Later, bilateral agreements on reciprocal copyright protection were concluded. At the end of the 19th century the first multilateral agreement was signed: the *Berne Convention for the Protection of Literary and Artistic Works of 1886*. The signatory states formed the Berne Copyright Union. In the 20th century another fundamental multilateral agreement was concluded: the *Universal Copyright Convention of 1952*. Both agreements

affiliate a large number of states.[1] However, other types of international copyright protection are also used in today's world: reciprocal protection and bilateral agreements.

Bilateral agreements may be concluded between states which are involved or uninvolved in multilateral agreements; and also between a signatory state of a multilateral agreement and an uncommitted state.

The laws effective in a number of states provide for protection on condition of reciprocity of copyright granted elsewhere.

The French law may be cited as an example.[2] Originally, the law of 1852 and Article 425 of the Criminal Code of France qualified as a violation of copyright and as counterfeit (contrefaçon) an infringement committed not only in France but also in another country, whereby unauthorized reprints were smuggled into France. Later, judicial practices provided for the protection of the rights of foreign authors on a par with French ones. Legislation adopted on July 8, 1964 and supplemented with a decree on enforcement of March 6, 1967[3] embodies the principle of reciprocity, stipulating that no protection be granted to works first published in a country where French works enjoy no corresponding protection.

The principle of reciprocity is stipulated in a specific form in the legislation of Hungary, Denmark, Spain, Italy, Cuba, Norway, Poland, Morocco, the USA, Switzerland, Sweden, Tunisia, and some other states.[4]

The Code of the Laws of the USA (Title 17—Copyrights, § 8) provides, in particular, that the copyright secured by this title shall extend to the work of an author or proprietor who is a citizen or subject of a foreign State or nation only "when an alien author or proprietor shall be domiciled within the United States at the time of the first publication of his work". Otherwise reciprocity or

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[1] The history of these agreements is discussed in Chapter 2.

[2] A. Françon. *La propriété littéraire et artistique*. Paris, 1970, pp. 104-108.

[3] For greater detail see Chapter 6.

[4] The laws of some countries extend protection without reciprocity to foreign works first published abroad, although, it is true, they may require compliance with definite formalities. Among them are Argentina, Belgium, Brazil, Venezuela, and Portugal.

participation of a corresponding state in the Universal Copyright Convention of 1952 is required.

Protection also extends to the works of foreign authors who are citizens or subjects of states specially proclaimed by the US President as eligible to protection by the US law. A proclamation is subject to reciprocity on the part of the beneficiary state. On the basis of such proclamations or treaties the United States maintains bilateral copyright relations with 36 states.[1]

The copyright law of Sweden adopted on December 30, 1960 provides for analogous treatment of foreigners. The law applies to works of Swedish subjects or persons who have their habitual residence in Sweden, as well as to "works first published in Sweden" (§ 60). It is stipulated at the same time that "on condition of reciprocity the King in council may provide for the application of this act in relation to other countries" (§ 62).[2]

Hungarian legislation provides another example. The copyright law No. III of 1969 in the Hungarian People's Republic stipulates that "the present law affords protection to works first published abroad only if the author is a Hungarian citizen or is granted protection by force of an international agreement or reciprocity" (§ 2). The commentaries on this law by Hungarian authors emphasize that reciprocity may be of crucial importance to states which have not acceded to or have withdrawn from an international convention.[3]

The copyright laws adopted by the developing countries in the sixties and the seventies also envisage this possibility. The principle of reciprocity in relation to works first published in another state is embodied, for instance, in the Moroccan law of July 29, 1970. The possibility of reciprocity is also provided for in the Tunisian law of February 14, 1966.

Historically, multilateral agreements were preceded by bilateral ones. In the 19th century and, in certain cases,

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[1] In particular, with Argentina, Brazil, Canada, Poland, Romania, and the FRG (see *International Copyright Relations of the United States*. Circular 38A, Copyright Office, Washington, 1971).

[2] Articles 57 and 59 of the Norwegian law of May 12, 1961 embody the same principles.

[3] G. Boytha. *Das Urheberrecht der Ungarischen Volksrepublik*. West Berlin, 1974, S. 91.

in the 20th century, bilateral copyright obligations were embodied in individual articles or in addenda to trade treaties. Later the need arose for concluding specialized bilateral agreements to regulate all or individual aspects of copyright relations between states.[1] The multilateral agreements have reduced the importance of bilateral agreements, but they "have not completely pushed them into the background", as A. Troller justifiably notes.[2] For instance, the agreements concluded and the declarations on reciprocity exchanged by the United States with the member countries of the Berne Copyright Union had been of major importance prior to its accession to the Universal Copyright Convention. Some bilateral agreements between the United States and other countries have retained their significance to date.

France has bilateral copyright agreements with many countries.[3]

The Federal Republic of Germany has also concluded a number of bilateral agreements.[4]

Many bilateral agreements have been concluded by Spain (with ten Latin American states), by Austria, Italy, and other countries.[5]

In accordance with international agreements, Soviet legislation also affords protection to works by foreign authors first published abroad. The Fundamentals of Civil Legislation of the USSR and the Union Republics promulgated in 1961 envisage that copyright in a work first published abroad is recognized in the USSR in conformity with and within the limits of corresponding international agreements concluded by the USSR. The provision expresses a general favourable attitude to inter-

[1] M. Plaisant. *Traité de droit conventionnel international concernant la propriété industrielle.* Paris, 1950, pp. 12-13.

[2] A. Troller. *Die mehrseitigen völkerrechtlichen Verträge im Internationalen Gewerblichen Rechtsschutz und Urheberrecht.* Basel, 1965, S. 7.

[3] With Belgium, Bolivia, Brazil, Chile, Costa Rica, Ecuador, El Salvador, Finland, Greece, Guatemala, Italy, Mexico, the Netherlands, Norway, Portugal, Spain, Sweden, Turkey, and the USA.

[4] E. Ulmer. *Urheber- und Verlagsrecht*, S. 74.

[5] See texts in the bulletins *Copyright Laws and Treaties of the World. UNESCO, 1956*; *Lois et traités sur le droit d'auteur* (Paris, 1962) published by UNESCO jointly with BIRPI (now OMPI, WIPO in English). See also information on treaties: *Quellen des Urheberrechts.* Frankfurt a. M., 1961.

national copyright agreements. Until 1973 Soviet contractual practices had been based exclusively on bilateral agreements. Such reciprocal copyright protection agreements were concluded with Hungary (1967) and Bulgaria (1971).[1] In 1973 the USSR joined the Universal Copyright Convention of 1952. Other bilateral agreements were signed with the GDR (1973), Poland (1974), and Czechoslovakia (1975). Thus, the Soviet Union takes part in international copyright protection through participation in multilateral and bilateral agreements.

Thus, each state selects one or another type of international copyright protection, depending on its cultural policy, economic, historical, legal and other conditions and specific features of that state.

Usually, the Western legal literature gives prime attention to the economic aspect of the matter. Highly advanced states are defined as exporting countries, since they grant on a broad scale licenses for translation rights and export books, while countries buying licenses and importing literature, which are interested in the speediest use of foreign literature on the most advantageous terms, are defined as *importing countries.*[2]

Indeed, the economic interest of publishers and other main copyright proprietors has a substantial part to play in selecting a type of international copyright protection. However, in addition to the economic aspect of the matter other factors should also be borne in mind in assessing one or another type of international protection and the interest of a state in such protection in general.

For example, in the Soviet literature S. I. Rayevich called attention to the fact that local writers are interested in recognition rather than denial of copyright to foreign authors, since the higher prices of foreign books as a result of such recognition facilitate the distribution of

[1] For the content of these agreements see Chapter 7.

[2] A. Françon. *La propriété littéraire et artistique*, pp. 103-104. This division is presented, for instance, by A. Meyer (Switzerland). He discriminates between economically stronger and economically weaker importing countries. The former, e.g., some capitalist countries, are prepared in principle to pay for translations of works by foreign authors, while the latter prefer the free use of foreign works in general (A. Meyer. *Die Regelung des Übersetzungsrechts in nationalen Gesetzen und in internationalen Staatsverträgen.* Zürich, 1957).

local literature.[1] Such recognition involves the need to pay royalties to both national and foreign authors. At the same time, the cost of publication of a translated book with the added cost of translation will even be somewhat higher. What is more, for a number of states the need to transfer abroad foreign exchange to pay the author is a factor to be reckoned with.

On the other hand, local publishers may be interested in a broad and free publication of translated literature unprotected by copyright. They are often motivated by the fact that publication of a well-known author popular abroad involves lesser risks than publication of a local, national author, especially as in the former case it is unnecessary to pay royalties.

In addition to firms exporting literature, sound-recordings and gramophone records, international protection is sought by leading writers and composers whose works are in request abroad.

In the past (and in certain cases today) tensions were especially acute in relations between publishers of countries speaking the same language in a situation of unregulated problems of international copyright protection. It is known that in the middle of the last century Belgium was a bonanza place for a large number of publishing companies specializing in counterfeit publications, i.e., reprints of books earlier published in France, without a license or payment to the authors. The cheap prices of these books undermined the competitive power of French publishers and ruined some of them.[2] Victor Hugo and Émile Zola waged an active campaign against this "literary robbery" and "piracy". Charles Dickens came out in favour of international copyright protection during his visit to the United States.[3]

International copyright protection meets the interests of publishers of countries speaking the same language but it does not eliminate competition among them. Among such countries are Britain, the United States, and Canada;

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[1] S. I. Rayevich. *International Private Law.* Moscow, 1934, p. 246 (in Russian).

[2] For the history of this struggle see A. Pilenko. *International Literary Conventions.* St. Petersburg, 1894 (in Russian).

[3] For greater detail see Hesketh Pearson. *Dickens. His Character, Comedy, and Career.* London, 1949, pp. 105-107.

France, Belgium, and Switzerland; the FRG, Austria, and Switzerland; Spain and the Latin American states except Brazil; Brazil and Portugal.

In addition to the economic factor, however, the cultural and political factors are also of importance. In this context, the experience in the cultural revolution implemented by the Soviet socialist state has international significance. Lenin said in one of his discussions: "The Red October opened wide the road to a cultural revolution on the grandest scale, which is being brought about on the basis of the incipient economic revolution and in constant interaction with it. Imagine millions of men and women of various nationalities and races, and of various degrees of culture all striving on towards a new life. A superb task confronts the Soviet Government. In a few years or decades it must redress the cultural wrong of many centuries."[1] The main thing Lenin repeatedly emphasized was the need to advance the educational and cultural standards of the people.

The problem of using all the cultural values of the past as well as the scientific and cultural achievements of the capitalist countries naturally arose in the effort to accomplish this all-important task.

Lenin stated in this context: "We must take the entire culture that capitalism left behind and build socialism with it. We must take all its science, technology, knowledge and art. Without these we shall be unable to build communist society."[2]

The solution of this problem was facilitated by the copyright legislation of the young Soviet Republic, in particular, by the Decree of November 26, 1918 proclaiming scientific, literary, musical and artistic creations national property.[3]

The decree enacted a prerogative of the state to proclaim its monopoly of translation rights as well as translations of literary works published in foreign languages abroad (Article 10). Later Soviet legislation, however,

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[1] V. I. Lenin. *On Literature and Art.* Moscow, 1975 p. 234.

[2] V. I. Lenin. "The Achievements and Difficulties of the Soviet Government". *Collected Works*, Vol. 29, p. 70.

[3] *Collected Decrees of the RSFSR*, 1918, No. 86, Item 900 (in Russian).

did not extend the title of national property to scientific, literary, musical, and artistic productions.[1] The tasks of securing the widest possible access of the masses to the achievements of science and culture were accomplished in a different way. It is important to emphasize here, however, that the very idea embodied in this first decree—the idea of limiting in the interests of society the author's rights to dispose of his work—was realized in later years as well.

This served the interests of public education and science.[2] This idea was also embodied in the principle of freedom of translation. The Fundamentals of Copyright of 1925 established that translation of another's work into another language was not a violation of copyright.[3] In the Soviet Union with its many different nations the application of this principle contributed to the exchange of cultural values among them and gave the Soviet readership access to modern foreign fiction and the scientific and technological achievements of other countries.[4]

The principle of freedom of translation of foreign authors applied in the Soviet Union at a certain stage of its development was the most effective way of accomplishing the tasks faced in the cultural revolution. The advancement of national culture in the constituent Republics of the Soviet Union, the general progress of Soviet science and culture, the development of international cultural exchange between the USSR and other countries—all these factors led to the abolition of the freedom of translation and the accession of the USSR to the international system of copyright protection on a multilateral and bilateral basis.

Three types of international copyright protection have been mentioned. Their application involves some gener-

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[1] M. V. Gordon. The Concept of Soviet Copyright. *Transactions of the Kharkov Institute of Law*, 1939, Issue 1, pp. 90-103 (in Russian).

[2] Prof. Ivan Peretersky, an outstanding Soviet lawyer, wrote of this in his time. See I. S. Peretersky. The Tasks of Soviet Legislation in the Field of Copyright. *Soviet Law*, 1923, No. 1, p. 96 (in Russian).

[3] Later this principle underwent a definite evolution. For greater detail see Chapter 5.

[4] V. I. Serebrovsky. *The Problems of Soviet Copyright Law*, pp. 46-47.

al problems, which deserve to be dwelt upon. This is primarily the problem of the application of the *national régime* often called the principle of assimilation. In the doctrine of private international law the national régime usually implies the extension to foreigners of the same rights as accorded to the nationals of a given state, i.e., they are placed on the same legal footing. In the case in question the national copyright law is applied to foreign authors. The scope of rights, the procedure of their protection and other questions arising from the application of the national régime to foreign authors are determined exclusively by local legislation.

Hence the administrative agencies and courts of law of a given state will not apply the rules of foreign copyright law. This is a fundamental principle embodied in the multilateral copyright conventions (Articles 4-6 of the Berne Convention, Article II of the Universal Convention) and in numerous bilateral agreements.

While admitting the advantages of the national régime in copyright protection, Western authors have pointed out its shortcomings: in their opinion in countries with a high level of copyright protection (implying also a wider range of protected works and corresponding rights) the rules of domestic legislation will be applied to works of nationals of those countries where the level of protection is lower; in the latter countries, however, their own nationals and nationals of states with a higher level of protection will be denied such rights.[1] In Ulmer's view the national régime is defective in that it fails to guarantee material reciprocity.[2] Since material reciprocity implies the equality of specific rights in a given country and in a foreign state, the national régime, indeed, does not accord such reciprocity. The following circumstance should not be ignored, however: for all the differences, sometimes of principle, between the domestic laws of different countries, the national régime neither grants privileges to foreigners nor discriminates against them. The Berne and the Universal Conventions differently approach the question of the application of the national régime. The Universal Convention provides for the appli-

[1] W. Bappert, E. Wagner. *Internationales Urheberrecht.* München und Berlin, 1956, S. 41.

[2] E. Ulmer. *Urheber- und Verlagsrecht*, S. 70.

cation of the national régime as the decisive factor in defining all aspects of the copyright of the persons concerned (except the right of translation), whereas the Berne Convention regards it as an auxiliary factor. As is pointed out by many authors, in the Berne Convention the principle of the national régime is compensated for or supplemented by regulations providing for a definite minimum of protection.[1] At the same time, this minimum, as compared with the provisions of the Universal Convention, is the maximum protection according to the terminology widely accepted in the literature.[2] In other words, these authors believe that the Berne Convention affords a high level or a maximum of protection, while the Universal Convention accords a low level of protection.

In our opinion, this comparison does not show that a high level is better than a low one, that one agreement offers better advantages than the other. Each state motivated by its own goals decides which agreement is preferable to it. At any rate it is indisputable that an agreement providing for a low level of protection or, to be more specific, an agreement less deviating from the basic principle of international protection—the principle of the national régime—can be expected to have a more universal character and attract a wider range of participating states. The Universal Copyright Convention of 1952 exemplifies agreements of this kind.

The question of most-favoured-nation treatment must also be considered. This usually implies the extension in an international treaty or on the basis of domestic legislation in one state to nationals of another state of the same rights that are enjoyed by nationals of a third country. In this way, most-favoured-nation treatment places on an equal footing nationals of all foreign states with which treaties containing a corresponding clause were concluded. Most-favoured-nation treatment is widely used in commerce and merchant shipping. In the 19th and early 20th century it was also applied to copyright and was embodied in a number of bilateral arrangements, primarily in general treaties of commerce covering mat-

[1] A. Troller. *Das internationale Privat- und Zivilprozeßrecht...*, S. 153.

[2] Sidjanski-Castanos. *Droit d'auteur ou copyright.* Lausanne, 1954.

ters of copyright protection. In present-day international law, however, this principle cannot operate in the special field of copyright. Both the Berne Convention and the Universal Convention are based on the principle of national treatment and contain no provisions having the power of a most-favoured-nation clause.

To an inquiry from the UN Secretary-General, BIRPI replied concerning the members of the Berne Union that member states were free to conclude new agreements with other member states without an obligation to grant any more favourable treatment provided for in such agreements to other member states. This information was requested by the UN International Law Commission which studied the question of most-favoured-nation treatment.

In the view of BIRPI, member states of the Berne Convention may conclude a special agreement with a limited number of other member states without an obligation to grant any more favourable treatment provided for in such an agreement to another state which is not a party to it. Otherwise, it would have been difficult or impossible to conclude regional agreements. Thus, in the opinion of BIRPI, the principle underlying the most-favoured-nation clause is incompatible with the purpose of the agreements on intellectual property.[1]

In our view, this provision should be applied not only to regional or other agreements concluded between individual parties to multilateral conventions but to all bilateral copyright agreements in general. When concluding such an agreement the two contracting states lay down on condition of reciprocity specific provisions concerned exclusively with works of their nationals. Therefore, such provisions cannot be applied to the copyright of nationals of a third state, although a general treaty of commerce with that state may contain a most-favoured-nation clause. Copyright protection, just as protection of industrial property, must be excluded from the sphere of most-favoured-nation treatment.

As noted above, national treatment in the sphere of copyright is usually granted not automatically, uncondi-

[1] Mr. Endre Ustor's report on the Most-Favoured-Nation Clause to the UN International Law Commission on March 9, 1970 (Doc. A/C No. 4/228, p. 49).

tionally but on condition of reciprocity. By virtue of the principle of reciprocity the rights of a foreigner in one country are protected if the law of the country he is a national of or the country of first publication protects the rights of nationals of the country where protection is claimed. Reciprocity is differentiated in the formal and the material sense.

Formal reciprocity may be expressed in particular in reciprocal national treatment.[1] The parties reciprocally afford national treatment in respect of protection of works of their nationals. At the same time, the specific rights and purview of protection may not be identical. The requirement of formal reciprocity only means that a state guarantees copyright protection in principle. The quality or level of such protection is of no consequence.

According to an opinion current in the literature, a typical attribute of formal reciprocity is the absence of any link between the law of the country of origin of a work and the law of the country in which protection is claimed.[2] As pointed out above, material reciprocity implies the equality of specific rights. In this case, a definite kind of protection is required.[3] As is known, in certain cases the principle of material reciprocity cannot be applied in view of the fundamental differences between the legal systems of states with different socio-economic systems. What is more, the application of this principle may raise complications since the content of the insti-

[1] In the literature corresponding terms are not always used in the same meaning. For instance, J.-P. Niboyet, a well-known French author, describes the principle of formal reciprocity as abstract reciprocity (J.-P. Niboyet. *Traité de droit international privé français*, t. II. Paris, 1938, pp. 233, 241). The Swiss collision law expert A. Schnitzer maintains that the principle of formal reciprocity is identical with national treatment (A. Schnitzer. *Handbuch des Internationalen Privatrechts*, Bd. I. Basel, 1950, S. 250).

As A. Troller justly remarks, however, these notions are not identical (A. Troller. *Das internationale Privat- und Zivilprozeßrecht...*, S. 18). The treaty practices confirm this conclusion. For example, the Montevideo Convention on Literary and Artistic Property grants on condition of reciprocity not national treatment but rights to authors and their assigns in the country of printing or first publication.

[2] A. Baum. Die Reziprozität im Brüsseler Text der RBÜ. *GRUR, Int.*, 1951, S. 115.

[3] J.-P. Niboyet defines material reciprocity as concrete in contrast to abstract (formal) reciprocity.

tutions of law of different countries will have to be compared and sometimes it will be impossible to establish in general whether the purview of protection afforded in another country will be sufficient for the claim of reciprocity to be considered satisfied.[1]

In the field of copyright the principle of formal reciprocity is usually applied just as in other fields. International copyright protection, however, is distinctive in that the principle of material reciprocity is sometimes permitted in international practices in this field.[2] For instance, the Berne Convention applies this principle to the term of protection (Article 7.8), protection of works of applied art (Article 2.7), the purview of protection of authors who are nationals of countries outside the Union (Article 6.1), and the right of subsequent disposal (droit de suite) provided for in the Brussels, Stockholm and Paris Acts of the Berne Convention.

In contrast to the Berne Convention the provision for the duration of copyright in the Universal Convention is the only exception to the general principle of formal reciprocity. In other questions, the Universal Convention does not recognize material reciprocity, and consistently applies national treatment (assimilation).[3]

The principle of material reciprocity is applied in bilateral arrangements and in domestic legislation only in isolated cases.

The principle of territoriality largely predetermines also the solution of collision questions in this field of

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[1] This is correctly maintained by A. Troller (A. Troller. *Das internationale Privat- und Zivilprozeßrecht...*, S. 18).

[2] G. Boytha. Reciprocity in International Copyright Law. *Questions of International Law. 1968.* Budapest, 1969, pp. 37-63; A. Troller. Die Reziprozität im Brüsseler Text der revidirten Berner Übereinkunft, Bd. 52. *GRUR, Int.*, 1950, S. 276; *Das internationale Privat- und Zivilprozeßrecht...*, S. 17-19, 154-159.

[3] The Paris Conference for Revision of the Universal Copyright Convention in 1971 reaffirmed this circumstance by expressing the view that addition to the Convention of an explicit provision against material reciprocity was superfluous since the above-mentioned general principle was a valid principle of this Convention. See Report of the General Rapporteur at the Conference. On the principle of national treatment in the Universal Convention see T. R. Kupferman, M. Foner. *Universal Copyright Convention Analyzed.* N.Y., 1955, pp. 13-22; A. Bogsch. *The Law of Copyright under the Universal Convention.* Leyden-New York, 1970, pp. 22-23.

relations with the "foreign element". The question of the choice of law may arise only when a foreign author is granted protection in a given country in general. Then it is necessary to determine the standards of which law must regulate such questions and which law must determine the content of protection. It may be a matter of applying either the law of the country where protection is claimed or the work is used, or else the law of the country of origin of the work (lex originis); the latter implies in respect of published works the country of first publication and in respect of unpublished works the country the author is a national of or is domiciled in. The application of national treatment to protection of foreign authors substantially facilitates the solution of collision questions. The overwhelming majority of countries apply the law of the country where protection is claimed, i.e., domestic legislation (lex loci protectionis). The literature sometimes equates this principle specific precisely to copyright with the general principle of the law of the court (lex fori), since this implies that a court (or another state institution) will apply to such cases the copyright law of the country of litigation.

In certain cases, the principle of the law of a work's country of origin is applied along with the principle of the law of the court. This can be illustrated by the court practice in France. It is precisely a question of principle since neither the legislation of France nor that of other countries contains collision norms on copyright.

The court practice in France tends to apply to these cases the law of France as the country where protection is claimed. At the same time, as evidenced by André Françon, the courts have also taken into consideration the law of the country of origin of a work, at least down to the present time. They refused protection in France to a work exempted from protection by the law of the country of origin.[1]

The main multilateral agreements embody, as a rule, the principle of applying the law of the country where protection is claimed (lex protectionis). One exception is three Latin American conventions (Montevideo, 1889; Caracas, 1911; and Havana, 1928), whose practical signif-

[1] A. Françon. *La propriété littéraire et artistique*, p. 308.

icance is small. The convention adopted at Montevideo (1889) embodies the principle of the country of origin of a work (lex originis). The country of origin is understood to be the country of printing of first publication. The Washington Convention of 1946, however, embodies the principle of applying the law of the country where protection is claimed, but its extension depends on the existence of protection in the country of origin.

It should be noted in conclusion that in the question of the choice of law the bilateral arrangements for reciprocal copyright protection concluded by the USSR with other states fully abide by the principle of applying the law of the country where protection is claimed.

3. International Book Exchange and Copyright Protection

The system of international copyright protection which helps overcome the territorial limitation of copyright began to emerge at the end of the last century. The juridical literature of that period contains many statements to the effect that this system is called upon to protect the just interests of the authors as the creators of intellectual works regardless of their nationality, to secure the harmonious development of copyright as a natural right of man. As far back as the period of the bourgeois revolution the bourgeoisie proclaimed the right of literary and artistic property the most sacred right of property.[1]

In order to bring to light the true reasons for establishing the system of international protection, the essence of the various trends which influenced its development and the introduction of certain amendments into this system, it is necessary to find out in the first place whose interests are served by the international multilateral copyright agreements.

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[1] Submitting to the Convent in 1791 a proposal for a copyright law the rapporteur Le Chapelier said: "The most sacred, most legitimate, most incontestable and, so to speak, most personal of all properties is literary work, the fruit of a writer's thought." (Quoted from *Dr. aut.*, 1963, No. 9, p. 168.)

Karl Marx defined in his time the position of the author in capitalist society and his relations with publishers. In the *Theories of Surplus-Value* he wrote: "A writer is a productive labourer not in so far as he produces ideas, but in so far as he enriches the publisher who publishes his works, or if he is a wage-labourer for a capitalist."[1] This description holds true of the entire subsequent development of bourgeois society. The range of commodity relations steadily widened. In the conditions of bourgeois society the title of commodity was extended to what seems to be such inalienable rights of the individual as the right to a name, which was expressed in the possibility of alienation of the right to a trade name and a trademark for compensation when the name of the entrepreneur had become part of the trade name.

The economic conditions of bourgeois society compel the author to sell his work to the publisher.

In the second half of the 19th century the process of concentration of the publishing business, the emergence of giant publishing associations began in the leading capitalist states, for instance, in Germany and France. As capitalism developed and entered the stage of imperialism publishing companies grew into giant capitalist enterprises. Scientific and technological progress, the development of new technical facilities of information spreading, transmission of signals and images had the result that copyrights were appropriated, in addition to publishing firms, by gramophone recording companies followed by broadcasting, television and motion picture companies. The companies concentrated in their hands the publishing business, the press, theatrical art, cinematography, broadcasting and television. In the biggest capitalist countries there is a trend towards concentration of the publishing business, an increase in the profits of capitalist enterprises in the field of "cultural business". It is known that no industry in the United States brings such high profits as the publishing business. Amalgamation and absorption of companies are a common occurrence. A few of the large number of publishing firms account for the bulk of the book output.

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[1] Karl Marx. *Theories of Surplus-Value* (Volume IV of *Capital*), Part I. Moscow, 1975, p. 158.

Large publishing companies set up their branches, subsidiary enterprises abroad. Stiff competition results in the bankruptcy of small firms and further enrichment of big ones. At the same time, book-publishing companies meet with steadily growing competition on the part of the television and broadcasting companies.

The expansion of the publishing business, the concentration of publishing companies, the growing role of other capitalist concerns in distributing intellectual works—all this has had the result that in a modern capitalist state the author's property in copyright is even less than it was in the middle or the end of the 19th century. The contemporary system of copyright disposal has become extremely complicated in the conditions of the rivalry of enterprises over profits and superprofits. In a number of countries some publishing firms specialize exclusively in reprints, which are usually cheaper than the first edition.

These firms buy up licenses for reprints of books, sometimes by unknown authors, from firms which have already published them in a small edition.

The rights of cinematographic or television dramatization are also sold and purchased. In the fields of cinematography, broadcasting and television copyright is often granted directly to capitalist monopolies.

Thus, in contemporary capitalist society the copyright does not practically belong to the author. The right of disposal of a copyrighted work has been assigned by the author to the publisher. This determines the payment policy. Payment is calculated exclusively from economic factors, most commonly from the number of book copies sold. The utilization of the up-to-date technical facilities for information reproduction and dissemination is also of no small importance in the continued development of the commercial exploitation of copyright. The invention of sound-recording, transmission by phototelegraphy and teletype, the use of communication channels, videorecording and transmission of images, the development of videocassettes, photomechanical duplication facilities—all these have opened up new opportunities for commercial uses of intellectual works. Western economists admit that modern technological progress has given rise to such types of copyright and such "copyright surplus" which

the author himself is often unable to enjoy and compelled to assign to publishers, agencies or a specialized organization. Economists say frankly that nowadays the author is greatly dependent on the market, on the publishers.[1] Thus, in contemporary bourgeois society copyrights are concentrated in the hands of capitalist monopolies.

The existing technical facilities afford unlimited opportunities for broad uses of literary, scientific and artistic works of one country in another. For example, literary works are used through the export and import of books and other printed matter, granting licenses for reproduction and translation.

The world's book output grows, as a rule. This is illustrated by the data in Table 1.

Table 1

The Output of Books (Number of Titles) in 1968-1973

Country	1968	1969	1970	1971	1972	1973
Britain	31,372	32,321	33,441	—	33,109	35,177
Spain	20,008	20,031	19,717	19,762	20,858	23,608
USA	59,247	62,083	79,530	80,569	81,124	83,724
FRG	30,223	33,454	45,369	40,354	—	—
France	18,646	21,958	22,935	22,372	24,497	27,186
Japan	31,086	31,009	31,249	31,040	31,074	35,857

Source: *Statistical Yearbook. 1971*, *UN*, N.Y., pp. 783-786; *1972*, pp. 785-788; *1974*, pp. 793-795; *1975*, pp. 878-880.

The table demonstrates that the USA leads the capitalist world for the number of titles of book output. It is followed by the FRG, Britain, Japan, France, and Spain. The number of translated editions is also great (see Table 2). According to UNESCO data, up to 47,000 titles of translated editions are published in the world annually. Books are translated from English (more than one-third), French (about one-seventh), Russian (about one-tenth), German (about one-tenth); these are followed by translations from Italian and Spanish.

[1] H. Göpfert. Zur Geschichte des Autorenhonorar. *Das wissenschaftliche Buch*. Hamburg, 1969, S. 92.

Table 2

Translated Editions (Number of Titles) in 1971

	Number of Translations
Total of translations	42,984
in particular:	
from English	17,164
from French	5,594
from German	4,458
from Russian	4,330
from Italian	1,091
from Spanish	529

Source: *Statistical Yearbook. 1975. UN.* N.Y., *1976*, p. 888.

Table 3 presents UNESCO data for the main publishing countries which put out many translations. They show that the largest number of translated books are brought out in the FRG, Spain, the USSR, Japan, Italy, and the USA.

Among the capitalist countries the leading exporters of translated books are Britain, the USA, France, the FRG, Spain, and Italy. The leading importers are the FRG, Spain, the USA, Japan, Italy, France, and the Netherlands. India leads the field among the developing countries.

The situation in the international book trade is roughly the same. Britain is the leading book exporter. Some British publishing firms export 60 per cent of their output. Exports account for about 40 per cent of the publishers' aggregate turnover. In France the respective figure is 20 per cent. The share of book exports from the United States is slightly smaller, but it exports a larger number of newspapers and magazines.

The export of printed publications is also used for foreign policy goals. At the same time, it is a means of advertizing goods of exporting countries, of commercial propaganda. We have in mind not only advertisements of firms in newspapers and magazines, radio and television programmes, but also the advertizing of articles used by heroes of literary works, goods shown in films, etc.

Table 3

Output of Translated Books (Number of Titles) in 1968-1973

Country	Number of books					
	1968	1969	1970	1971	1972	1973
Total (all countries of the world)	36,809	38,172	41,500	42,970	39,143	46,773
in particular:						
USSR	—	3,853	3,580	4,730	4,463	4,400
FRG	2,260	2,878	5,128	3,906	2,767	6,462
Spain	2,538	2,737	2,944	3,148	3,204	4,486
USA	2,182	2,059	2,569	2,284	2,189	1,996
Japan	2,145	2,165	2,067	2,225	2,180	2,284
France	2,035	1,989	1,918	1,991	2,176	1,935
Italy	1,688	2,483	1,587	2,282	1,886	2,093
Netherlands	1,942	1,606	1,651	1,968	1,874	1,590
Sweden	1,479	1,669	1,539	1,246	1,451	1,599
India	854	824	939	740	808	673

Source: *Index translationum*, 21 (1968), Paris, 1970, pp. 853-854; 22 (1969), Paris, 1971, pp. 900-901; 23 (1970), Paris, 1972, pp. 950-951; 24 (1971), Paris, 1974, pp. 994-995; 25 (1972), Paris, 1975, pp. 830-831; 26 (1973), Paris, 1976, p. 873.

In the conditions of the present "information explosion" the number of scientific publications has sharply increased, which has resulted in a growth in their translations. The trend towards expansion in the scope of using works of one country in another is still more manifest in the fields of broadcasting, television and cinematography.

The exchange of broadcasting programmes, and especially of TV programmes and films, is steadily widening. As for motion pictures their export and import have long become a leading item in the trade turnover of the USA, Italy, France, etc. Co-production of films is growing continually.

The conversion of publishing companies into large capitalist enterprises has made the conclusion of international copyright conventions an objective necessity. Large publishing firms, broadcasting corporations, film producers, newspaper and magazine concerns, sound-recording manufacturers have vested interest in the publication

and other uses of intellectual works outside their countries.

This is not to say, of course, that the institution of international protection as regards its objective result does not secure protection for the rights of actual authors and promote international cultural, scientific and technological co-operation. In our day when the world's progressive forces are struggling for detente this latter circumstance is of crucial importance.

4. Copyright and the Problems of the Developing Countries

The Asian, African, and Latin American countries have inherited from colonialism not only economic but also cultural backwardness. In many states on these continents almost 100 per cent of the population was illiterate at the time they became independent. Eradication of the aftereffects of the colonial yoke through economic development has been the central goal of the efforts of the newly independent states. However, it is impossible to overcome the economic lag without wiping out illiteracy, without rapid cultural advancement. The developing countries are experiencing an acute shortage of skilled national manpower, technicians and engineers. To offset this shortage, a schooling system is being set up and developed. Books, textbooks in particular, are needed to eradicate illiteracy, to set up schools and universities.

Characteristic of the Asian, African, and Latin American countries is a "book famine". The extent of book shortage in the developing countries was assessed in the late sixties with the aid of UNESCO statistics on the average number of books per head of the population in the developing countries. Africa and Asia accounted for 9.4 and 28 per cent of the world's population respectively, and with Latin America for a total of 70 per cent. In the world's book output, however, the share of Asia was 2.5 per cent and that of Africa, a mere 0.15 per cent.[1] There were 22 titles per million inhabitants in Africa,

[1] *UNESCO Bulletin for Libraries*, 1971, Vol. XXV, No. 6, pp. 373-374.

and 32 in Asia, whereas the average number for the world as a whole was 127, and for Europe 418.[1] The situation in Latin America was somewhat better, although a book shortage was clearly in evidence there, too.

A comparison of the aforementioned data with the per capita number of books in the advanced countries reveals a large gulf. In the advanced countries it may be 20 and at places 40 times that in the developing countries of Asia, Africa, and Latin America.

The general book shortage in these regions, however, is not the only problem. A shortage of literature required for the economic development of the Asian countries was pointed out as far back as 1966 at the UNESCO-sponsored first regional conference of book-publishing experts held in Tokyo. In educational and scientific literature the exact and applied sciences account for only 2.6 per cent, as against 20.57 in France, 21.32 in the USA, 26.74 per cent in Britain, and 54.52 per cent in the USSR.[2] Only one-third of the demand for textbooks was supplied in Asia.

The UNESCO conference on expansion of book publishing in Africa held in Accra in February 1968 pointed out an acute shortage of textbooks. In a number of African countries books were not published at all because of the absence of printshops, and books in national languages were printed in only 9 of 23 African countries.[3]

The conference of experts on book production in Latin America at Bogota in September 1969 raised some urgent problems of inadequate development of book publishing.[4] Regional conferences of experts on the Asian, African, and Latin American countries brought to light an acute book shortage in the majority of these countries, which noticeably retarded the implementation of various educational programmes and their general cultural, scientific and technological development. Experts recommended mea-

[1] *La promotion du livre en Afrique. Problèmes et perspectives. Etudes et documents d'information*, No. 56. UNESCO, Paris, 1969, p. 9; *La promotion du livre en Asie. Etudes et documents d'information*, No. 52. UNESCO, Paris, 1968, p. 6.

[2] *Réunion d'experts sur la production et la distribution du livre en Asie* (Tokyo, 25-31 mai 1966). Doc. UNESCO/MC/55, p. 4.

[3] *La promotion du livre en Afrique...*, p. 9.

[4] *Réunion d'experts sur la promotion du livre en Amérique Latine* (Bogota, 9-15 septembre 1969). Doc. UNESCO/COM/MD/10.

sures to increase book production and distribution in Asia, Africa, and Latin America.

There are a number of obstacles in the way of overcoming the "book famine" in the developing countries.[1] These are the unavailability of adequate means for setting up their own printing facilities and a shortage of foreign exchange for buying publications abroad, the absence of publishing personnel, etc. After winning independence many former colonies renounced the official use of the language of the former metropolitan countries in favour of their national languages for instruction at school. The number of books published in the native languages is obviously insufficient, which "has created many difficulties", as Mr. Dina N. Malhotra, the managing director of Hind Pocket Books Ltd. in Delhi, pointed out. "In countries like India, which are multilingual and want to provide educational books in all the national and regional languages, this problem has become enormous."[2]

The developing countries have two possibilities for gradually resolving this problem: boosting the import of publications and increasing their own output, including licensed editions. Both involve the problems of copyright, primarily that of payment to foreign copyright proprietors.

Book imports to the Asian countries vary roughly from 27 to 37 million copies a year, which is equivalent to one-fifth or one-fourth of the total book printing in Asia. In the African countries book imports are of decisive importance: 75 per cent of the book copies sold in Africa are imported from countries on other continents, primarily from the United States, Britain, and France.[3] The Latin American countries import books mostly from Spain, Portugal, and the United States, as well as from France, the FRG, Italy, Japan, and Britain.[4] The leading book exporters to the developing countries are in the

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[1] A. Françon. Le droit d'auteur et les pays en voie de développement. *Clunet*, 1968, No. 4, pp. 889-890.

[2] D. N. Malhotra. The Book Famine in Developing Countries. *UNESCO Bulletin for Libraries*, 1970, Vol. XXIV, No. 4, p. 212; O. K. Dreyer. *The Cultural Reforms in the Developing Countries*. Nauka Publishers, 1972, pp. 55-56 (in Russian).

[3] *La promotion du livre en Afrique...*, p. 10.

[4] *Réunion d'experts sur la promotion du livre en Amérique Latine*, p. 11.

order of priority Britain, the United States, Spain, France, Japan, and the FRG.

As noted above, the existence of a copyright has an essential bearing on the price of a book. In the developing countries the problem of prices of books, pamphlets and periodicals is especially acute in view of the low living standard of their population. What is more, book imports to the developing countries face them with another problem of copyright: the possibility of reproduction of foreign publications by means of modern technological copying facilities, which is of fundamental importance for educational and scientific purposes. The availability of licenses for various uses of copyrights depends on the consent of their proprietors.

It is important to emphasize that broad importation of books in foreign languages published abroad is regarded in a number of developing countries as a temporary measure justifiable as long as local publishers are unable to operate on their own.[1] At the same time, the problems of translation and publication of foreign literature in these countries assume growing importance. This is especially true of educational and scientific publications, textbooks and teaching aids in the national languages.

In such cases problems of copyright come to the foreground. Payment to foreign authors or rather to copyright proprietors detracts from the competitive power of national publishers. With the inadequate printing facilities, paper shortages and a number of other unfavourable factors the need to pay the authors aggravates the positions of local publishers.

The developing countries experience a shortage of foreign exchange; therefore, not only the payment of emoluments to the authors but also their transfer abroad (to the United States, Britain, and other countries) is a difficult problem for them.

In a discussion of the general problems of copyright at the conference of experts at Bogota one of the speakers pointed out that the "essential problem was contained in the opposition between the advanced countries and the

[1] The broad importation of books by the developing countries hampers the growth of local publishing houses (see about this D. N. Malhotra. *Op. cit.*, p. 213).

developing countries. He declared that the developing countries felt disappointed in their hopes to developing their own publishing business and thereby gain access to the sources of world culture, since they had been unable to obtain the rights of publishing individual books."[1]

The conferences on book production and distribution in Tokyo and Accra indicated that payment to the authors seriously hampered broader book circulation in the Asian and African states because of their limited purchasing power.

These circumstances explain for the desire of the developing countries to plan a copyright policy meeting their national interests.

They seek to ensure that their legislation contain, on the one hand, provisions encouraging national authors and, on the other hand, exclude reservations restricting the free use of foreign works for education, instruction, and research.[2]

A series of legislative measures are applied in the developing countries. The legislation of Argentina, Brazil, and Mexico provides for such measures as the establishment of various funds to encourage local authors (for instance, composers), in particular by deductions from and higher taxes on payments to foreign authors. In my view, the enactment of such rules is justified, since they are directed to encouraging the development of national culture.

Similar rules are introduced by the developing countries in the field of cinematography. The most progressive in this respect is the legislation of India which allows only 10 per cent of the returns from showing foreign films to be taken out of the country. The remainder must be spent in India to finance co-production of films and buy Indian films to be shown abroad. In 1971 the government of India took more radical measures, withdrawing all import of oreign films from the sphere of private

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[1] *Réunion d'experts sur la promotion du livre en Amérique Latine*, p. 14.

[2] M. Dasilva. Le droit d'auteur et l'Afrique, *RIDA*, 1965, sept. About the legislation of Egypt, Tunisia, Morocco, Ethiopia, and other African states see the material of the colloquium of African experts on copyright at Rabat, Morocco, in October 1970 (*Interauteurs*, 1970, No. 181).

enterprise and entrusting it to the Indian state motion-picture exporting corporation (IMPEC).

Although the legal problems of motion picture production are not examined in detail in the present work, this example has been adduced because in the developing countries with their largely illiterate population (in India with her population of some 600 million the illiteracy rate is 70 per cent) c nematography is one of the main mass media of information, propaganda and education. This is precisely why regulation of the showing of foreign films is so important for encouraging and developing national cinematographic art and for the cultural advancement of the developing countries.

The law on the protection of literary and artistic property adopted in Egypt in 1954 lays down in the public interest certain restrictions on the rights of authors: for instance, the exclusive rights of translation are granted for only five years; if a work has not been translated into Arabic during this period the right of translation is terminated and free translation of the work is allowed. Thereby the legislators gave preference to the public interests, the interests of the state over the individual interests of the author. The author is stimulated to perform a translation as early as possible, contributing thereby in the interests of science to using the fruits of human thought in the various countries of the world.

The task of enacting laws providing for definite restrictions on the author's rights in the interests of education is especially urgent. This circumstance was reflected in drafting a standard copyright law approved in 1964 by the Committee of African Experts set up by UNESCO and BIRPI. The adoption of this draft was preceded by the African seminar on copyright in Brazzaville which had set the guidelines for the draft. The standard copyright law provided the basis for the copyright laws of Zambia, Malawi, Kenya, and Tanzania; and its principles have been applied in Morocco, Tunisia, and some other countries.

The draft was drawn up with a view to the local features specific to the development of the African countries.[1] However, some of its clauses failed to meet these require-

[1] *Bull. du dr. d'aut.*, 1965, No. 1, pp. 36-37.

ments and were subjected to well-deserved criticism in the developing countries. For example, it inadequately resolved the problem of photographic reproduction of materials protected by copyright laws.[1]

Let us discuss the attitude of the developing countries to the main multilateral arrangements on copyright. It has been stated above that these arrangements were concluded primarily in the interests of large publishing firms and other corporate proprietors of rights in musical and artistic works. In other words, the rules of conventions meet the interests of the countries exporting books and other intellectual productions rather than the importing countries, the developing countries among them.

In the period of colonial domination the monopolies, in conformity with the so-called colonial clause of the Berne Convention, extended its operation to what were at that time their colonies, protectorates, and dependent territories.[2] After they had gained independence these countries were faced with this dilemma: either to achieve amendments in the convention or to withdraw from it.[3] As for the countries which were not a party to the Berne or the Universal Convention, they were in certain cases interested in amending their provisions to be able to join them. The main thing for all developing countries is for the provisions of international conventions to facili-

[1] See for greater detail J. E. Esezobar (Nigeria). Copyright Implications for Reprographic Services in Libraries. *UNESCO Bulletin for Libraries*, January-February 1971, Vol. XXV, No. 1, pp. 18-19. The draft of the standard law (Article 11) entitles libraries, educational institutions, documentation centres and other similar institutions to reproduce materials protected by copyright with the authorization of a corresponding Minister. The commentary to the law justly emphasized that the young universities of Africa should be enabled to promptly issue to teachers and students the editions they need which may be unavailable in the repositories. This can be done through photographic reproduction of the originals (*Bull. du dr. d'aut.*, 1965, No. 1, p. 39). However, as Esezobar points out, this right provided for in the draft cannot be used until it has been established that the copyright owner has "unreasonably refused" to sanction reproduction (Article 25).

[2] This accounts for the fact that the Berne Convention has been effective since 1887 in India, Pakistan, Senegal, Madagascar, Mali, Niger, Cameroon, the Congo, the Ivory Coast, and Dahomey; since 1931 in Ceylon (Sri Lanka). See about it C. Masouyé. Décolonisation, indépendance et droit d'auteur. *RIDA*, 1962, juillet-octobre, p. 85.

[3] The Upper Volta withdrew from the Berne Union.

tate their cultural progress, the development of education first and foremost.

The developing countries have another alternative: regional arrangements. Their representatives have repeatedly indicated this in the last few years.[1]

In the sixties the developing countries started a struggle for making amendments to international conventions that would meet interests and contribute to the development of education and culture. The first suggestions to this effect relating to the Berne Convention were made at the Copyright Conference of African Countries at Brazzaville in 1963.[2]

The UNESCO regional seminars on publishing matters held at Tokyo, Accra, Bogota and on Cyprus discussed proposals for amendments to the Universal Copyright Convention, as well as for measures to be taken by UNESCO to facilitate the publication of literature in the developing countries. At these seminars the developing countries expressed their critical attitude to the international conventions.[3]

At the conference of experts at Accra some speakers demanded inclusion in international law (la legislation internationale) of provisions more equitable to the African countries regarding the protection of literary property and payment for the use of protected works.[4]

On the initiative of the developing countries the UNESCO General Conference took a decision to revise

[1] In particular, at the Stockholm diplomatic conference of 1967 India's representative declared that if the conference failed to adopt a protocol for the developing countries, India would withdraw from the Berne Union and enter into negotiations with other countries outside the Union for concluding a convention meeting the requirements of the developing countries (*Actes de la Conférence de Stockholm de la propriété intellectuelle. 1967*, Vol. II. Genève, 1971, pp. 992, 1006-1007). Another example may be adduced: in accordance with the UNESCO Resolution B. 121 of 1966, Mohamed El Bassioni, Secretary General of the Union of National Broadcasting and Television Organizations of Africa, prepared a report substantiating the need for an African regional convention for copyright protection.

[2] The Conference recommended that the forthcoming Stockholm Conference should discuss proposals for the free use in the developing countries of works by other countries' authors for the purposes of education and research.

[3] La *promotion du livre en Asie...*, p. 24.

[4] *La promotion du livre en Afrique...*, p. 18.

the Universal Convention. As for the Berne Convention, a special Protocol Regarding Developing Countries was adopted as a result of the efforts made by representatives of these countries at the Stockholm diplomatic conference of 1967 and the support given them by the socialist states. The Protocol contains definite if only minimum limitations concerning the proprietors of copyright and making possible more liberal use of protected works in the developing countries, primarily for the purposes of teaching, scholarship and research.[1]

A campaign against ratification of the Protocol, however, was opened in all main copyright-exporting countries. For instance, the 26th CISAC Congress in Vienna in June 1968 passed a special resolution pointing out what were in its opinion unacceptable provisions of the Stockholm Protocol. The resolution recommended the member countries of the Berne Union to abstain from ratification of the Protocol. As it was stated at a conference on the problem of scientific publications at Bohum University in connection with the Stockholm Protocol, it was not that the large countries exporting books were opposed to developing countries reprinting their literature, but they were apprehensive lest the "pirate editions" (Raubdrucken), as one publisher put it, be replaced by licensed editions financed out of funds provided as aid to developing countries.[2]

The Stockholm Protocol was blocked by the Western countries, which resulted in "an international copyright crisis", according to the terminology of the special literature, and it was only after long discussions in the various preparatory committees that it became possible to revise the Universal and Berne Conventions at the Paris diplomatic conferences of 1971.[3] Their new texts, as it appears to us, contain only minimum limitations on the use of protected works in developing countries.

Along with a demand for adapting the effective conventions to the needs of developing countries these countries put forward proposals for specific measures to reme-

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[1] For greater detail concerning the content of the Protocol see Chapter 2.

[2] *Das wissenschaftliche Buch*, S. 94.

[3] For greater detail see Section 1 of Chapter 2.

dy the disastrous situation in the field of book distribution in the Asian, African and Latin American countries.

UNESCO measures directly affecting copyright problems should be discussed in greater detail. UNESCO is implementing a series of programmes in fighting the after-effects of colonialism, widening education and eradicating illiteracy among the adults. It is known that even in our day only 60 per cent of children of school age attend school and one-third of the adult population on earth cannot read and write. In 1970 UNESCO carried out a series of measures within the framework of the International Education Year. An International Book Year was observed in 1972. Naturally, the problems of book publication and distribution in the developing countries were paid keen attention in implementing all these measures.

As said above, the need to pay royalties to the authors is one of the obstacles faced by developing countries in the use of literature they require. The first attempt to solve this problem at least partially was planned by UNESCO in its programme for 1969-1970.[1] It pointed out that UNESCO had taken steps to ensure a balance between the need to disseminate books in the importing states and the protection of the fundamental principles of copyright by extending the allocation of UNESCO coupons to cover the payment of royalties.[2] The programme also proposed more effective measures to be taken, in particular, for book-publishing countries implementing bilateral co-operation agreements with developing countries to supply funds for payment of royalties to their authors whose works are used in developing countries, primarily in the fields of education, science and culture. It was contemplated to pay fees for reproduction and for translation of corresponding works to be subsequently used in developing countries.

It might be presumed that the publishing circles might agree with this presentation of the problem. This is evidenced in particular by a report of the West German Institute for Book Market Research. The authors of the

[1] UNESCO programmes are adopted for every two years.

[2] See UNESCO's Programme for Documentation, Libraries and Archives, 1969-1970. *UNESCO Bulletin for Libraries*, 1969, Vol. XXIII, No. 3, p. 124.

report published in 1968 recognized the importance of aid which had to be given to developing countries. This does not mean, however, as the report said, that compensation to the copyright owners should not be paid in full. Publishers must be rewarded out of funds of aid to developing countries provided by industrial nations. "In this way adequate emoluments may also be paid to the authors of each country without affecting book prices. These books are costlier than those regarding which foreign copyright has been used without compensation."[1]

The idea of such use of the funds provided for aid to developing countries is supported by E. Ulmer. In his opinion, by supplying funds for this purpose developed countries will make it easier for developing countries to buy books and copyright licenses. Thereby they will serve the distribution of national literature of these countries and the cultural requirements of developing countries.[2] As it was pointed out, this solution to the problem has another aspect: the property interests of publishing firms and other capitalist monopolies will be slightly affected if at all.

In view of this approach to financial problems it should be noted that the Stockholm diplomatic conference of 1967 adopted a recommendation which recognized the specific economic and cultural requirements of the developing countries and requested the International Bureau to study in collaboration with other governmental and non-governmental organization the possibilities and methods of establishing a financial system that would enable a just and commensurate compensation to be paid to the authors (Recommendation No. III).[3] This recommendation was adopted after a discussion at the conference of possible sources of funds from which compensation could be paid to the copyright proprietors whenever their protection was restricted in developing countries by the provisions of the Protocol Regarding Developing Countries. In other words, if a work was used in a developing country for educational or research purposes without

[1] *Berichte des Instituts für Buchmarkt-Forschung*, 1968, No. 41, S. 60.

[2] *GRUR, Int.*, 1969, S. 379.

[3] *Dr. aut.*, 1967, No. 12; *Actes de la Conférence de Stockholm...*, Vol. II, p. 1435.

payment of royalties the copyright proprietor could be rewarded in some other way, in particular from an international fund.[1]

A special study group held a session in March 1968 to examine this problem in the light of the above recommendation; its work, however, failed to produce definite results.[2] The question of an international fund was also brought up by the International Copyright Joint Study Group at its meeting in Washington in 1969.[3] According to E. Ulmer's evidence, however, the Group did not follow this path. Experts referred to the aforementioned UNESCO coupons issued for various cultural purposes, in particular, for buying books and copyright licenses to offset foreign exchange shortages, as well as to assistance within the framework of bilateral agreements.

Then the UNESCO International Copyright Information Centre was instructed to study the ways and means of acquiring copyrights and licenses by developing countries short of foreign exchange. The question of setting up this Centre was discussed in detail at the very same Washington meeting of the International Copyright Joint Study Group in 1969. To assist developing countries it was decided then to establish a centre to collect, on the one hand, information on the demand of these countries for literature and, on the other hand, on the possibilities of granting them licenses for reprinting and translation of works they required.

The Study Group recommended UNESCO to set up such a centre. The Copyright Information Centre was organized in 1971.[4] It facilitates the establishment of similar national centres and maintains connections with them.[5] One of the tasks of the Centre is to facilitate the access of developing countries to materials protected by

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[1] *Actes de la Conférence de Stockholm...*, Vol. II, p. 974.

[2] See a report on the work of the group in *Dr. aut.*, 1968, No. 4, p. 88.

[3] About the formation and activities of this Group see Section 1 of Chapter 2.

[4] UNESCO International Copyright Information Centre. *UNESCO Bulletin for Libraries*, 1971, Vol. XXV, No. 6, pp. 373-374; *Chronique de l'UNESCO*, 1971, Vol. XVII, No. 5, p. 204; No. 8-9, p. 342; *Bull. du dr. d'aut.*, 1972, No. 3, pp. 12-17.

[5] Such copyright centres have been opened in the USA, Britain, France, and the FRG.

copyright, primarily those that can be used to develop education, science, and culture. At first the Centre polls competent authorities, publishing companies and other organizations in developing countries to ascertain their demand for books, and then inquires publishers, organizations and authors in developed countries as to their willingness to grant licenses. Copyright proprietors in developed countries are asked to communicate the titles of their works and the conditions on which they are prepared to grant licenses, particularly for reprinting, translation, and broadcasting. In some cases copyright proprietors authorize the Centre to conclude contracts in their names, in other cases the Centre mediates in making contracts.

Another task of the Centre is to draft standard license contracts and perform a number of other functions to promote publishing in the developing countries.

Needless to say, the establishment of the Centre has made it easier for the developing countries to set up contacts with copyright proprietors. However, the effectiveness of its efforts to overcome the "book famine" in the developing countries and to ensure unobstructed use of foreign literary and scientific works for educational and other purposes depends on the conditions on which appropriate licenses are granted.

Examination of various aspects of the copyright problems arising in relations with the developing countries makes it clear that in the modern world they cannot and must not be handled in the traditional way. The interests of the developing countries must be given priority. UNESCO and other international organizations are called upon to do everything in their power to help these countries to eradicate illiteracy, cultural backwardness and other sequels of colonialism as early as possible.

5. The Impact of Technological Progress on International Copyright Protection

The emergence and development of international copyright protection have been intimately connected with new inventions and with rapid scientific and technological progress.

National copyright legislation has also been seriously influenced by technological progress.

The first privileges, which had preceded copyright laws, were issued to book printers and dealers. The invention of book printing was of crucial importance since it enabled book publication on a mass scale. The invention of photography enabled image reproduction, and of cinematography, mass-scale dissemination of dramatized and other literary works.

The invention of radio opened up unlimited possibilities for instantaneous information transmission and worldwide dissemination of literature and art.

Broadcasting was followed by television, which enabled direct transmission of live and recorded images to homes. The progress in space exploration resulted in the development of artificial earth satellites. TV programmes are relayed via communication satellites.

Modern technological progress has made it possible to record voice and music on phonograms with the result that the sound-recording industry has grown tremendously, at first in the field of gramophone records and then tape recordings manufacture. In the seventies sound-recording was supplemented with the production of recorded images, and the manufacture of videocassettes was started. The public and individual use of videocassettes to improve education and meet many cultural requirements will widen the possibilities for using musical, dramatic, and other works.

The methods of reproduction of the printed word did not remain unchanged either. Printing processes were perfected, the so-called small printing facilities, such as rotaprint, etc., were developed, and photomechanical reproduction of printed matter, by microfilming in particular, became widespread.

Technological progress has not only widened the range of facilities and methods of reproduction, distribution and transmission of literary, scientific and artistic works but also afforded new possibilities for creative work.

Electronic computers have given rise to man-machine systems, helping to create programmes and algorithms, carry out machine translation and automatic compilation of texts. Other results of technological development were

colour and electronic music.[1] Computers began to be used to compose music and verses.[2]

The development of space technology, the use of satellites for broadcasting and telecasting relay, the possibility to receive images from spaceships (photographs of the far side of the Moon, telecasts from the Moon)—this list is endless, since science and technology open up new vistas before mankind.

Thus, technological progress provides new conditions for the very process of creation and gives birth to new objects of copyright, as well as to new ways and means of dissemination of intellectual works on a worldwide scale.

Let us adduce the art of a performing artist as an example. Until the late 19th century the performance of an actor could remain only in the memory of a spectator;

[1] Electronic music is musical compositions based on electroacoustic sounds, emitted by generating apparatus and recorded directly on tape, bypassing the transitional acoustic form. Moreover, in the musical field experiments have been carried out to develop an electronic synthesizer generating sounds by electromagnetic means. See M. Kummer. *Das urheberrechtlich schützbare Werk*. Verlag Stämpf & Cie, Bern, 1968, S. 143-198; B. Nawrocki. Evolution de l'art et droit d'auteur. *Dr. aut.*, 1964, No. 9, pp. 223-231, No. 10, pp. 249-261; K. Fromm. Der Apparat als geistiger Schöpfer. *GRUR, Int.*, 1964, H. 9, S. 304-306; M. Fabiani. Sind Apparate geistige Schöpfer. *GRUR, Int.*, 1965, H. 8/9, S. 422-425; B. Samson. Die moderne Kunst, die Computer-"Kunst" und das Urheberrecht. *UFITA*, 1970, Bd. 56, S. 117-118; K. Knap. Urheberrechtliche Fragen auf dem Gebiet der elektronischen Musik. *UFITA*, 1972, Bd. 64, S. 53-82.

[2] In the present work we do not dwell on the questions of referring new objects called into being by scientific progress to copyright or patent law. The most topical problem of this kind is one of protection of computer programmes. In the United States first programmes were registered in 1964 by the Copyright Office, confirming thereby the opinion that these programmes could be considered objects of copyright. This decision evoked debates in the USA and other countries. In Europe a similar point of view was expressed by E. Ulmer (E. Ulmer. *Der Urheberschutz wissenschaftlicher Werke unter besonderer Berücksichtigung der Programme elektronischer Rechenanlagen*. München, 1967). He believed that in compiling programmes programmers had in principle a wide choice of variants; therefore, programmes drawn up for one and the same purpose might differ from one another. (*Op. cit.*, S. 17.) A. Troller (A. Troller. *Immaterialgüterrecht*, Bd. I, S. 375) held the opposite viewpoint. International agreements may provide for protection of such objects evidently after these problems have been resolved in the countries party to these agreements.

it could not be recorded. In our day the possibility of rapport between the audience and the performing artist has changed radically. A phonogram has made it possible to record his voice, and cinematography to reproduce his image. A spectator watches the performance of an actor on TV in his apartment. The progress of recording technique has made it possible to record any performance. Any concert can be repeated in recorded form, and the dissemination of videocassettes will lead to complete reproduction of an artist's performance.

All this has made it necessary to solve the problem of protecting the rights of both performing artists and phonogram producers.[1] Modern technical facilities increasingly remove the copyright from the author and from the performer.

Stiff competition started among such copyright proprietors as broadcasting companies and monopoly phonogramme manufacturers. Broadcasting corporations seek to secure the free use of recordings for broadcasts under the author's license, while phonogram manufacturers are interested in prohibiting such use of recordings without their consent.

The problems of using corresponding rights are also of importance in the competition between television and motion picture companies. Phonogram manufacturers seek such protection for their rights that would forbid commercial production of copies and reproduction of recordings. As the Danish lawyer T. Lund points out, their main object of interest is control over the use of disks for "public performance", over the radio first and foremost.[2] Here their interests clash with those of broadcasting companies, which is expressed both in drafting domestic legislation (for instance, in Denmark, Finland,

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[1] For greater detail see R. Plaisant. *Le droit des auteurs et des artistes exécutants.* Série "Documents actuels" des Editions J. Delmas et Cie. Paris, 1970. In this work the author also discusses the amendments made on these questions in the Berne Convention in 1967. For the legal aspects of using cassettes see G. Brugger. *Die neuen audio-visuellen Systeme.* Verlag Dokumentation, München, 1970.

[2] T. Lund. Les droits des fabricants de disques. *Etudes sur la propriété industrielle, littéraire, artistique. Mélanges Marcel Plaisant.* Sirey, Paris, 1960, pp. 260-261.

Norway, and Sweden in drafting a uniform copyright law) and in a special convention in this field.[1]

Development of identical new technical facilities influences the legal regulation of copyright protection quite differently in the socialist and the capitalist countries. This difference became especially glaring with the spread of broadcasting. As soon as it was invented broadcasting became just another source of profits for the monopolies. Any broadcast is an object of an exclusive right, which usually belongs to a publishing firm in the case of literary works dramatized for the radio or to manufacturers of gramophone and tape recordings in the case of musical broadcasts, or to another copyright proprietor, including a broadcasting company itself. Stiff competition among various groups of business proprietors of copyrights immediately flared up over the problems of broadcasting rights. When domestic legislation and international conventions were still absent, the deciding vote was cast by practice. A British court, having recognized an author's exclusive right of broadcasting his work over the radio, ordered a British broadcasting company to indemnify a French composer for an unlicensed broadcast of his musical work.[2]

In the Soviet Union the problem was resolved quite differently. Radio and then TV brought the finest theatrical productions, and concerts of performing artists within reach of the audiences in all parts of the country. In a resolution of April 10, 1929 [3] the Central Executive Committee and the Council of People's Commissars of the USSR allowed broadcasting studios to come on the air with works performed in theatres, concert halls and other public places without making any special payments either to the authors and performers or to the theatres.

The principle of Soviet copyright is embodied in the Fundamentals of Civil Legislation and in the Civil Codes

[1] In the literature this object of protection is called "neighbouring rights". In view of this, T. Lund justly noted that this was protection of company profits rather than authors' rights, therefore it could not be affine, related to or bordering on copyright. (T. Lund. *Op. cit.*, p. 266.)

[2] *Dr. aut.*, 1928, No. 1, p. 7.

[3] *SZ-SSSR*. (The Code of Laws of the USSR), 1929, No. 26, Item 230.

of the Union Republics. Article 492 of the Civil Code of the Russian Federation allows without the author's consent and payment of emoluments reproduction in motion pictures, radio and TV programmes of public speeches, reports, as well as published literary, scientific and artistic works. This applies also to live radio and television broadcasting of public performances.

This solution of the problem contributed to dissemination of knowledge and the general advancement of the cultural standards of the population.

Characteristically, technological development itself is faster than changes in domestic legislation and international conventions. The methods of using works of intellectual creation, the development of photography, mechanical recording facilities, cinematography, radio and television, the use of communication satellites for television relay transmission and the invention of other means of information spreading—all these have had a bearing on the international system of copyright protection.

Two methods were used in the past and are used today to provide a solution to the international aspects of the copyright problems caused by rapid scientific and technological progress. The first method is the extension of earlier convention rules to new situations, the second method is the amendment of existing international agreements or the conclusion of new conventions and arrangements. For instance, the original list of works protected by the Berne Convention included photographic works, for which a special régime was instituted (at the Berlin Conference of 1908); later it was extended to cinematographic works and the Brussels Conference of 1948 equated cinematographic and photographic works with literary and artistic works.[1] The new provisions adopted at the Stockholm Conference of 1967 widened the protection of cinematographic works, which met, in the first place, the interests of motion picture producers.

The development of the radio was followed by the inclusion in the Berne Convention at the Rome Conference of 1928 of a new article which granted the authors

[1] For greater detail see Ch.-L. Magnin. La Convention de Berne et l'évolution du droit d'auteur international. *Études sur la propriété industrielle...*, pp. 282-284.

the exclusive right to license radio broadcasts of their works. The Italian lawyer Ruffini wrote in this context: "Radio broadcasting has invaded the closely guarded domain of literary and artistic property as a very peculiar guest, according to one witty remark. It turned the house upside down.... In one leap it jumped over all frontiers."[1]

It was impossible simply to adapt the provisions of the Berne Convention to the new problems caused by the development of broadcasting. It was necessary to reckon not only with the specific features of the technical reproduction of works over the radio addressed to an uncertain number of listeners but also with the contradictions between the interests of different business groups.

The further regulation of the questions of radio broadcasting which provided for possible future discoveries in this technological field was implemented at the Brussels Conference of 1948, which was held at a time when broadcasting was already widespread.

The Conference was devoted mostly to radio broadcasting, sound-recording and cinematography.[2]

The development of sound-recording technology led to another international arrangement in 1961—the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. The Convention protects in particular a number of rights of performers, such as the right to forbid under definite conditions a radio or TV broadcast or another public performance, as well as recording and reproduction of their performance (Article 7). The Convention also provides for the payment of an "equitable remuneration" for the so-called secondary use, i.e., the application of phonograms in transmissions (Article 12). These provisions meet the interests of sound-recording companies.

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[1] F. Ruffini. De la protection internationale des droits sur les œuvres littéraires et artistiques. *Académie de Droit international. Recueil des Cours*, 1926, Vol. 12, p. 396.

[2] P. Bolla. La Convention de Berne pour la protection des œuvres littéraires et artistiques dans le texte révisé à Bruxelles. *Dr. aut.*, 1949, No. 3, pp. 25-36; H. Desbois. Caractères essentiels de la révision de Bruxelles de la Convention de Berne. *Études sur la propriété industrielle...*, pp. 239-246; Ch.-L. Magnin. *Op. cit.*, pp. 274-286.

The successes in the exploration of outer space have made it possible to relay TV programmes via communication satellites. At present, the system of Soviet satellites and the INTELSAT system are used for this purpose. During their operation a television image is relayed from a satellite to special ground receiving stations which transmit it to TV studios. In the near future transmissions will be received directly by home TV sets adapted for this purpose, obviating the system of retransmission.

Direct television broadcasting is one of the most promising fields in the use of outer space to meet the needs of man. Its application urgently demands the solution of important legal problems, which motivated the Soviet proposal at the United Nations for drafting a corresponding international convention.[1] The draft convention on the principles of using by states of artificial earth satellites for direct television broadcasting submitted by the USSR to the United Nations said in particular that it should be used for the purposes of raising the educational levels of the population, developing culture, widening international exchanges in the fields of science, culture and sports (Article 3 of the draft).

It was also necessary to resolve corresponding problems of copyright arising in this connection. Development of facilities for direct television broadcasting will have the result that it will be difficult to determine the area of reception and the number of televiewers. In the Western world this will also affect the interests of television companies and capitalist manufacturers of phonograms. Contracts concluded between broadcasting companies and copyright proprietors usually stipulate the geographical area of reception and the size of compensation is fixed accordingly.

With direct television broadcasting in which sound and visual programmes will be received directly by the televiewers the basis for payments will be completely changed. It will not be known who is receiving and listening to a programme, which will nullify the practice whereby the right of radio and television broadcasting,

[1] About this question see in particular Y. M. Kolosov. *Mass Information and International Law*. International Relations Publishers, Moscow, 1974 (in Russian).

as well as compensation for this broadcast, belongs to the transmitting body (i.e., relaying body), whereas the "original body", i.e., the programme producer, cannot do anything when a programme is being received and relayed abroad, if only he has not forwarded a copy of the tape recording or film to a corresponding agency in the other country willing to broadcast it by radio or TV.

The problems of copyright connected with the use of communication satellites have come up for discussion in the juridical literature[1] and at various conferences called by UNESCO and WIPO[2]. After a series of preliminary conferences a Committee of governmental experts met in Lausanne in April 1971 to discuss the problems of copyright and protection of the rights of performing artists, phonogram producers and radio broadcasting companies involved in transmissions via communications satellites.

The main item on the agenda was the question as to how to regulate copyright relations arising from transmission via communications satellites. Three methods were suggested: first, to apply in such cases with certain amendments the International Telecommunication Convention and the Radio Regulations compiled on its basis; second, to apply the above-mentioned Rome Con-

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[1] J.-L. Vencatassin. Propriété littéraire et artistique dans le contexte de l'utilisation des satellites de télécommunications. *Télécommunications par satellites. Aspects juridiques.* Paris, 1968, pp. 207-210; I. Mora. International Copyright and Patent Law Problems in the Space Age (With special regard to communications satellites). *Questions of International Law.* Budapest, 1966, pp. 133-141; A. Lokpantz-Bernitz. Les télésatellites et le droit d'auteur. *RIDA*, Vol. LXVIII, 1971, pp. 90-104.

[2] In particular, such conferences were held by BIRPI in October 1968 (*Dr. aut.*, 1968, No. 9, p. 230) and UNESCO in December 1969 (*Dr. aut.*, 1970, No. 2, p. 44; *Bull. du dr. d'aut.*, 1970, No. 1). Later UNESCO's General Conference in 1970 resolved to set up jointly with WIPO a special committee of governmental experts on these problems, which met at Lausanne in April 1971, at Paris in May 1972, and at Nairobi in July 1973. The Working Group on Direct Broadcast Satellites at the UN Committee on the Peaceful Uses of Outer Space also discussed these problems. At its second session in 1969 representatives of some states expressed themselves in favour of an urgent study of the problem of copyright protection in the process of DBS, in particular, prohibition of programme relays without consent of the copyright proprietors (UN Doc. A/AC. 105/66, pp. 8-9).

vention of 1961; and, finally, to draft and conclude a new convention to protect television programmes broadcast via satellite.

The majority of the conferees at Lausanne took a stand in favour of a new convention. With regard to copyright three possible solutions to the problem were discussed. The first was as follows: if a transmission via satellite violates the law of the state where the "originating organization" (transmitting station) is located, no copyright protection is granted. With the second solution the "originating organization" which transmitted a programme to a member country of a convention where it is denied copyright protection, must itself pay a just compensation to the copyright proprietor. With the third solution a transmission via satellite is the initial element of publication with no copyright protection granted at this stage.[1]

The Committee of Governmental Experts at Lausanne drafted a convention banning unlicensed broadcasting of programmes via communication satellites.[2] A new draft was compiled at the second meeting of the committee at Paris.[3]

The third meeting of the Committee was held at Nairobi, Kenya.[4]

The meeting worked out a new draft of the convention distinguished by a fundamentally new approach to the problem. It proposed that all regulation should be transferred from the sphere of private international law into the sphere of public international law. It was contemplated to provide for each contracting state to pledge "to take all appropriate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or through the satellite is not intended" and to exclude from the text the question of the rights of private copyright owners. The draft convention worked out at Nairobi

[1] G. Straschnov. Droit d'auteur.—Développements récents et perspectives d'avenir sur le plan international dans le domaine des satellites de communication. *OMPI Cycles de conférences. Montreux, 1971.* Genève, 1971, pp. 257-266.

[2] For the text of the draft and report on the deliberations of the Committee see *Dr. aut.*, 1971, No. 5, p. 102, et seq.

[3] *Bull. du dr. d'aut.*, 1972, No. 2, pp. 6-25.

[4] *Ibid*, 1973, No. 4.

was the main item on the agenda of the diplomatic Conference held at Brussels from 6 to 21 May 1974.[1] The Conference signed the Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite.

The present research does not purport to analyse this Convention or assess the results of the Brussels Conference. We shall only make a few points concerning copyright. Prime attention should be paid to the fact that the Convention shall not apply where the signals emitted by or on behalf of the originating organization are intended for direct reception from the satellite by the general public (Article 3).

The main rule of the Convention is contained in Article 2.1, which reads:

"Each Contracting State undertakes to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not intended. This obligation shall apply where the originating organization is a national of another Contracting State and where the signal distributed is a derived signal."

According to the Convention no Contracting State shall be required to apply the aforesaid measures "where the signal distributed on its territory by a distributor for whom the emitted signal is not intended

(i) carries short excerpts of the programme carried by the emitted signal, consisting of reports of current events, but only to the extent justified by the informatory purpose of such excerpts, or

(ii) carries, as quotations, short excerpts of the programme carried by the emitted signal, provided that such quotations are compatible with fair practice and are justified by the informatory purpose of such quotations, or

(iii) carries where the said territory is that of a Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, a programme carried by

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[1] The Conference was attended by representatives of 47 states. See *Bull. du dr. d'aut.*, 1974, No. 2/3, pp. 10-14; No. 4, pp. 6-57.

the emitted signal, provided that the distribution is solely for the purpose of teaching, including teaching in the framework of adult education, or scientific research." (Article 4.)

Under Article 6 of the Convention, it shall in no way be interpreted to limit or prejudice the protection secured to authors, performers, producers of phonograms, or broadcasting organizations, under any domestic law or international agreement. The Brussels Convention does not apply to direct broadcast satellites capable of emitting signals for direct reception. The General Rapporteur at the Conference pointed out in his report that at the time of the meeting of the First Committee of Governmental Experts in Lausanne, Switzerland, in April 1971, the satellites then in use were exclusively of the "point-to-point" variety, requiring ground stations with very powerful and expensive receiving equipment. By the time of the Brussels Conference much more powerful satellites had been put into orbit, which resulted in a rapid increase in the number of ground stations, although these were not yet "direct broadcast satellites". As was noted in the report, "in a sense, therefore, the preparation of the Brussels Conference represented a race between law and technology".[1] This suggests, in particular, the conclusion that far from all problems connected with the use of communications satellites should be regarded as resolved.

The Soviet draft convention on the principles of using by states of artificial earth satellites for direct television broadcasting, which was mentioned above, takes into account the need to resolve copyright problems arising in this connection.

Article 11 of the draft reads:

"The Contracting States which are party to the present Convention shall co-operate with each other on a bilateral and multilateral basis in matters regarding the protection of copyright in television programmes transmitted via artificial earth satellites. The specific conditions of said co-operation shall be stipulated by appropriate arrangements between the interested states party to the present Convention.

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[1] *Copyright Bulletin*, 1974, Vol. VIII, No. 4, p. 7.

"At the same time they shall give favourable attention to the interests of developing countries who have expressed their interest in the use of direct television broadcasting for the purpose of accelerated national development."

We have adduced just a few examples attesting to the fact that the development of technology, new facilities for production and distribution of intellectual works generates the constant necessity to take new decisions in the field of international copyright protection.

Chapter 2

A BRIEF HISTORY OF INTERNATIONAL COPYRIGHT PROTECTION

1. From the "Literary Congress" of 1858 to Diplomatic Conferences of the 20th Century

The soil for the first multilateral agreement on copyright —the Berne Convention—had been prepared by the activities of the so-called literary congresses.

The most important of them was the Congress of 1878 convened in Paris during the World Exposition. It was presided over by Victor Hugo and was attended by the most prestigious members of the literary community from different countries. Russia was represented by the great Russian novelist Ivan Turgenev. The Congress adopted a resolution proposed by the French lawyer E. Clunet which expressed a desire for a convention to be drawn up.

Recalling the history of the evolution of the Berne and the Paris Union, Prof. G. Bodenhausen pointed out that these Unions and their Bureaux owed their existence to private initiative. "States only intervened to establish, in the form of a Convention, proposals that were put forward independently of them."[1] The role played by publishers and book-dealing firms in creating the convention was described in the resolution of the Congress of the International Literary Association held in 1882. The Congress acknowledged that the demand for protection of intellectual property was identical in all countries and that it could be fully satisfied only by instituting, with the participation of representatives from

[1] G. Bodenhausen. The Evolution of the United International Bureaux. *Dr. aut.*, 1963, No. 5, p. 105; see also C. Masouyé. La Convention de Berne—ses principes, son évolution, son administration. *Symposium sur les aspects pratiques du droit d'auteur.* Genève, 1969, p. 8.

all governments, of a Union for the protection of literary property affiliating all states concerned; such a Union should be based on the ideas and wishes of all interested persons, i.e., not only men of letters but also publishers and book-dealers, composers and music publishers; that the question of such a Convention should be brought up for discussion by groups which may reveal the wishes and ideas of publishers and book-dealers, composers and music publishers specially assembled for this purpose, in view of which the Congress suggested that the Bureau of the International Literary and Artistic Association take the necessary measures.

The third conference at Berne[1] on September 9, 1886 concluded the Berne Convention for the Protection of Literary and Artistic Works. It was signed by representatives of ten states: Belgium, Britain, France, Germany, Haiti, Italy, Liberia, Spain, Switzerland, and Tunisia.[2]

The name of the Convention reflected the compromise between the proposals of France and Germany. At the Conference of 1885 the French delegation suggested a discussion of "the protection of literary and artistic property" and the German one, "the protection of copyright". On a proposal of Switzerland the former title was adopted in the final wording. At the same time, the Union set up by the Convention is called differently: the Union for the Protection of the Rights of Authors in Their Literary and Artistic Works (Article 1). The Act of the Berne Conference said that the wording of Article 1 corresponded with both French and German terminology. The text of the Berne Convention was later repeatedly revised and specified.

The Convention was first fully revised in 1908 at a congress in Berlin, which drew up the uniform text of the Convention with a uniform numeration of articles. The Berlin Congress was attended by a representative of Russia.

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[1] For more detail about these conferences see *L'Union internationale pour la protection des œuvres littéraires et artistiques. Sa fondation et son développement. Mémoire publié par le bureau de l'union.* Berne, 1936, pp. 37-59.

[2] Russia did not take part in the Berne Conferences. A US delegate attended the Conference of 1886 but abstained from signing the Convention.

The Rome Conference of 1928 made an important contribution to improving the Convention. Its resolutions reflected the advent of various new methods of disseminating intellectual works connected with the development of technical facilities. In particular, protection was granted to the authors' rights in works broadcast over the radio with reference to national legislation. This applied to the conditions of exercising the exclusive right to license broadcasts; provisions improving the protection of cinematographic works were also adopted.

After World War II the Berne Convention was revised at the Brussels Conference of 1948. Its text was considerably amended in the direction of increased convention protection.[1]

The protection system established by the Berne Convention was unacceptable to the countries of the American continent, which set up their special system of copyright protection by concluding a few Conventions: at Montevideo (1889), Mexico City (1902), Rio de Janeiro (1906), Buenos Aires (1910), Caracas (1911), Havana (1928), the second Convention at Montevideo (1940) and the Washington Convention (1946). All these Conventions except that of Montevideo (1889) were closed to non-American states. Of the Latin American countries the Berne Convention was initially joined only by Brazil. It was later followed by Argentina, Chile, Mexico, and Uruguay. As for the USA, there were three attempts on its part to accede to the Convention but all of them failed.[2]

[1] For greater detail see H. Desbois. Caractères essentiels de la révision de Bruxelles de la Convention de Berne. *Études sur la propriété industrielle...*, pp. 239-246.

[2] The first time, in 1931, when the Senate rejected the US President H. Hoover's proposal for US accession to the Berne Union, the second time, in 1935 and the third time in 1939, when F. Roosevelt's proposals were equally declined (see S. P. Ladas. *The International Protection of Literary and Artistic Property*, Vol. II, pp. 857-861). At the Stockholm Conference in 1967 the US representative declared that his country was considering accession to the Convention (*Actes de la Conférence de Stockholm de la propriété intellectuelle, 1967*, Vol. II. Genève, 1971, p. 811) but this declaration was not confirmed by practical deeds.

For the possibility of US accession to the Berne Convention and in connection with the adoption of the new US Copyright Law of 1976 see B. Ringer. *Copyright*, 1977, p. 192; W. H. Moore. The New Copyright Law: Domestic and International Impact. *Bulletin of the Copyright Society of the U.S.A.*, 1978, Vol. 25, No. 3,

In conformity with the recommendations of the Rome Conference of 1928 on a revision of the Berne Convention plans began to be drawn up of uniting at first the Berne and Havana Conventions (1928) and then of establishing a new independent Convention, which would provide a kind of bridge between the Berne Convention and the Pan-American Conventions on copyright.

The first Convention of this type was drafted at meetings of the Committee of Experts called in Paris in 1936 and in Brussels in 1938 by the League of Nations International Institute of Intellectual Co-operation. The Committee consisted of specialists from European and American countries. The outbreak of World War II interrupted this work, and it was resumed by UNESCO after the end of the war.

Great work was carried out under the aegis of UNESCO in the comparative study of copyright laws in the countries party to different conventions. The Commission of Experts had four meetings (in 1947, 1949, 1950 and 1951) which prepared the drafts of a new Convention and made it possible to call a diplomatic conference. It was held by UNESCO at Geneva between August 18 and September 6, 1952.[1] It was attended by representatives of 50 states, as well as a number of international organizations. In the course of the Conference the Universal (Geneva) Copyright Convention of 1952 was signed.[2] This Convention does not impair the Conventions already in force,

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pp. 199-200; A Françon. Réflexions d'un juriste français à propos de la loi américaine de 1976 sur le droit d'auteur. *RIDA*, 1978, No. 96, p. 31.

[1] The conferees signed three additional protocols to the Convention and other acts related to it. For the materials of the Geneva Conference of 1952 see A. Bogsch. *The Law of Copyright under the Universal Convention*, pp. 153-200; T. R. Kupferman, M. Foner. *Universal Copyright Convention Analyzed*, pp. 165-220.

[2] The Universal Copyright Convention became the subject of research by many authors. The most circumstantial of them is the commentary of A. Bogsch (A. Bogsch. *Op. cit.*). See also T. R. Kupferman, M. Foner. *Op. cit.*; W. Bappert, E. Wagner. *Internationales Urheberrecht*; W. Goldbaum. *Welturheberrechtsabkommen. Kommentar.* Frankfurt a. M., 1956; H. Desbois. La Convention universelle de Genève et la Convention de Berne. *Dr. aut.*, 1955, No. 9, pp. 130-134; No. 10, pp. 150-154; No. 11, pp. 169-173; A. Troller. *Das Welturheberrechtsabkommen.* Rabels Z, 1954, No. 1, p. 1. In the

and in the opinion of its authors, without affecting the involvement of states in other agreements, must lead in principle to international protection of literary and artistic works by as many states as possible.[1]

Another circumstance should also be pointed out. The Geneva Conference adopted, in the interest of large capitalist member states of the Berne Union, definite guarantees regarding the continued effect of the Berne Convention. These guarantees were embodied in a special declaration annexed to Article XVII of the Universal Convention. In the literature the Declaration is called the "safeguard clause relating to the Berne Convention" (Clause de sauvegarde de la Convention de Berne), which fairly accurately reflects its content. In this Declaration the member states of the Berne Union, which are signatories to the Universal Convention, "desiring to reinforce their mutual relations on the basis of the said Union and to avoid any conflict which might result from the coexistence of the Convention of Berne and the Universal Convention" accepted, by common agreement, the following two terms:

First, works which, according to the Berne Convention, have as their country of origin a country which has withdrawn from the International Union created by the said Convention, after January 1, 1951, shall not be protected by the Universal Copyright Convention in the countries of the Berne Union, i.e., a state which was formerly a member of the Berne Convention could not now become a member of only the Universal Convention, which might give it more favourable treatment than it had enjoyed under the Berne Convention. Second, it was laid down that the Universal Convention shall not be applicable to the relationships among countries of the Berne Union insofar as it relates to the protection of works having as their country of origin, within the meaning of the Berne

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Soviet literature see S. B. Krylov, A. I. Gorlov. International Copyright Conventions. *Problems of Private International Law*, Gosyurizdat Publishers, 1956, p. 103, et seq. (in Russian); Y. G. Matveyev. *International Copyright Conventions*, 1978 (in Russian).

[1] A. Troller. *Die mehrseitigen völkerrechtlichen Verträge im Internationalen Gewerblichen Rechtsschutz und Urheberrecht*, Basel, 1965, S. 16.

Convention, a country of the International Union created by the said Convention.

After the conclusion of the Universal Convention the further development of that Convention and the Convention of Berne was very closely interconnected. This was expressed, in particular, in establishing an organizational link between the agencies of the Berne Union, on the one hand, and the Intergovernmental Committee set up in accordance with the Universal Convention and the UNESCO bodies concerned with copyright problems, on the other, as well as in a number of joint publications, joint preparation of conventions and similar measures.

Turning back to the history of the Berne Convention, it should be pointed out that it was subjected to the most complete revision at the Stockholm diplomatic conference of 1967. It was attended by 418 delegates from 74 countries, including the USSR, the Ukraine, and Beylorussia. The Conference, which lasted for five weeks (from June 12 to July 14, 1967). adopted, in particular, new copyright rules, as well as the administrative and final provisions of the Berne Convention.[1]

Simultaneously with the revision of the Berne Convention the Stockholm Conference adopted a convention on the establishment of the World Intellectual Property Organization (WIPO). The institution of WIPO was reflected in particular in a change in the administrative provisions of the Berne Convention. In addition, the Stockholm' Conference adopted a special Protocol Regarding Developing Countries.

The results of the Conference were influenced by the struggle between two tendencies: the efforts of large capitalist states to widen to a maximum the convention protection of copyright and the efforts of the developing member countries of the Union to secure amendments in the Convention to meet the vital requirements of their educational and scientific development.[2]

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[1] Soviet representatives attended as observers the meetings of the 1st, 2nd, and 4th committees of the Conference, which discussed the questions of the Berne Convention.

[2] There is an extensive literature on the Stockholm Conference. See, for instance. H. Desbois. La Conférence de Stockholm relative aux droits intellectuels. *Annuaire français de droit international.* 1967, Vol. 13, pp. 7-46; *Die Stockholmer Konferenz für geistigen*

The first tendency was expressed in a widening of the spectrum of property rights of the authors; film producers were granted definite rights and other rules were introduced to meet primarily the interests of large publishing firms exporting intellectual works.

The second tendency became manifest mostly in the adoption of the Protocol Regarding Developing Countries.[1] This Protocol was adopted in the face of resistance from a number of states after heated debates and as a result of the support of the socialist states. The 2nd Principal Committee of the Conference recognized by a majority vote that in order to advance education and culture in developing countries it was necessary to provide (within the framework of convention protection) for the possibility of application by developing countries of a special privileged régime of using works by authors who are nationals of other member countries of the Berne Union.

In accordance with the Protocol developing countries were entitled to use for the purposes of teaching, scholarship and research any work without the author's consent and pay him royalties in conformity with their domestic legislation. Such payment could be made in the currency of the country where the work is used in compliance with the rules of national legislation concerning export and transfer of such currency.

Article 21 of the Stockholm Act of the Berne Convention stipulated that the Protocol Regarding Developing Countries shall be a constituent part of the Convention.

The Stockholm Conference provided that the contracting states could ratify the Stockholm Act in its entirety, with a reservation to the effect that ratification did not cover the material law clauses of the Convention (Arti-

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Eigentum. 1967. Weinheim, 1967; *Actes de la Conférence de Stockholm de la propriété intellectuelle, 1967*, Vol. I-II; S. Bergström. Rapport sur les travaux de la Commission principale No. 1 (dispositions de droit matériel de la Convention de Berne—articles 1 à 20) de la Conférence de Stockholm de la Propriété Intellectuelle. 1967. *Dr. aut.*, 1967, No. 9, pp. 190-216.

[1] About the Protocol Regarding Developing Countries see A. Françon. Le droit d'auteur et les pays en voie de développement. *Clunet*, 1968, No. 4, pp. 888-902; H. D. Sacks. Crisis in International Copyright. The Protocol' Regarding Developing Countries. *The Journal of Business Law*, 1969.

cles 1-21), and the Protocol Regarding Developing Countries did not cover the administrative clauses of the Convention (Articles 22-26). This decision was not accidental, since the sharply negative attitude of the Western countries to the adoption of the Protocol Regarding Developing Countries was obvious during the Conference itself. Further developments demonstrated that it was precisely because of this Protocol that the Stockholm Act was blocked. It was completely ratified only by the GDR, Senegal, Romania, Pakistan, and Chad.[1]

As a result only the administrative clauses of the Stockholm Act came into effect (early in 1970); the material law clauses and the Protocol Regarding Developing Countries failed to collect the requisite number of ratifications.

Thus, the Stockholm Act of the Berne Convention did not in effect enter into force.

Disillusioned about the possibilities for a favourable revision of the Berne Convention, the developing countries started pressing for a revision of the Universal Convention which also failed to meet their interests.

Since, as was pointed out above, the Universal Convention contains a "safeguard clause" against the withdrawal of its members from the Berne Union, the developing countries party to both Conventions (for instance, India) were faced with the problem of withdrawal from both Conventions. In this context, the problem arose of suspending the effect of the "safeguard clause" in relation to the developing countries: they desired to be able to withdraw from the Berne Union without exposing themselves to sanctions stipulated in the "safeguard clause".

The situation brought about by the blocking of the Stockholm Act was described as a crisis in the international system of copyright protection. As for the Universal Convention, the question of its revision was raised on the initiative of developing countries (India, Ghana, Kenya,

[1] A reservation concerning exemption from ratification of the material law clauses and the Protocol Regarding Developing Countries was made by nine countries; 26 countries directly ratified only the administrative clauses of the Convention in view of the entry into force of the Convention on WIPO. For greater detail see Rappel historique de la préparation de la révision de la Convention de Berne. *Dr. aut.*, 1971, No. 2, p. 19. This report was prepared by the Director-General of WIPO for the Paris diplomatic conference of 1971 (Doc. B/DC/3).

Malawi, and Nigeria). It should be noted that in the discussion of the process of the revision of the Universal Convention at UNESCO's General Conference, the proposals of the delegates of developing countries were invariably supported by the Soviet representative.

The 14th UNESCO General Conference in 1966 recognized that the Conventions governing international relations in the matter of copyright should be partially revised to take account of the economic, social and cultural conditions obtaining in the developing countries, which were essentially importers of "works of the mind".[1] The UNESCO Director-General was invited to submit this matter as soon as possible to the competent bodies to examine the possibility of revising the Universal Convention along the lines indicated in the UNESCO General Conference's resolution for the purpose of assisting in the accession to it of the developing countries.

To find a way out of the crisis, to revise both the Universal and the Berne Convention were the tasks which confronted another two diplomatic conferences held in Paris between July 5 and 24, 1971.

The composition of the delegates to the conferences was in the main identical.[2] The Conference for Revision of the Universal Copyright Convention was attended by representatives of 45 member countries, observers from 30 other states, representatives from three intergovernmental and 16 non-governmental international organizations. Delegations from socialist countries—Cuba, Czechoslovakia, Hungary, and Yugoslavia—took part in the conferences; the USSR and Bulgaria were represented by observers.

The Conference in Paris on July 24, 1971 adopted a new text of the Universal Copyright Convention. The

[1] *Copyright Bulletin*, 1967, Vol. I, No. 1, pp. 13, 14. The introductory report prepared by the UNESCO Secretariat for the diplomatic conference of 1971 (Doc. INLA/UCC/4, Paris, 1971) contains a review of the progress of preparations for a revision of the Universal Copyright Convention.

[2] About the deliberations of the conferences on a revision of the Universal Convention see the report submitted by the General Rapporteur to the Plenary Meeting (*Bull. du dr. d'aut.*, 1971, No. 4, pp. 3-37), as well as H. Desbois. La conférence diplomatique de révision des Conventions de Berne et de Genève. *RIDA*, 1971, Vol. LXVIII, pp. 50-66; V. de Sanctis. Révision des Conventions de Berne et de Genève. *Dr. aut.*, 1972, No. 12.

operation of the "safeguard clause" was suspended.

As for the Berne Convention, the Conference reaffirmed the main body of the Stockholm Act. What is more, the preamble to the Paris Act of the Berne Convention recognizes the importance of the work of the Revision Conference held at Stockholm, without which the Paris Act could not have been adopted. Amendments boiling down in the main to exclusion of references to the Protocol Regarding Developing Countries were made in individual articles of the Stockholm Act. The Protocol itself was replaced with an Appendix Protocol.

The Appendix Protocol contains provisions coincident as a rule with the revised text of the Universal Convention.

The Appendix Protocol consists of five articles. The first article presents the mechanism of reservations introduced in favour of developing countries; the second, the conditions under which the exclusive right of translation is substituted with a system of non-exclusive and non-transferable licenses granted by the competent authority of a developing country; the third defines the conditions under which such a system shall substitute for the exclusive right of reproduction; the fourth sets out the general conditions under which such licenses shall be granted; and, finally, the fifth determines the procedure whereby this Appendix Protocol enters into effect.

Summing up the results of the work of the Paris conferences of 1971 it should be noted that their decisions are a compromise between the just claims of the developing countries, on the one hand, and the unwillingness of large capitalist countries (primarily the USA, Britain, and France, where the main publishing centres are concentrated) to reduce the high level of protection provided for in the Berne Convention, on the other. The latter countries had to make certain, if only minimum, concessions to satisfy the demands of the developing countries. Limitation on the rights of authors, practically the proprietors of these rights, established at Paris was less than that in the Stockholm Protocol Regarding Developing Countries.

The practical significance of the provisions of the Paris Act for the development of culture and education in the developing countries is for the future to show. It is clear, however, that the struggle of the developing coun-

tries for satisfaction of their just demands must not be considered completed. At the Paris conferences they were supported by the representatives of the socialist states. The Hungarian delegation, in particular, took an active stand on this issue. Speaking in the general opening discussion, the Hungarian delegate announced, in particular, that the authors of Hungary were prepared to contribute freely to the translation of their works into the national language of any developing country, without any compensation, and that the competent Hungarian authorities were prepared to indemnify the authors of all works used for these purposes.[1]

After the coming into force of the Paris Act of 1971 the USSR, though not a party to it, made a declaration on the application to the works of Soviet authors in other countries of the Universal Convention as amended in 1971, in conformity with Article IX (4) of the Convention (see p. 96). This decision was aimed above all at creating favourable conditions for the use by the developing countries of works of Soviet authors for public education purposes.[2]

The deliberations of the conferences for revision of the copyright conventions reflected the bitter struggle between the interests of large capitalist states and small states, the former colonial powers and the developing countries. Disputes over legal formulations concealed stiff competition between different groups of firms: publishing, broadcasting and other companies.

Since the socialist countries acceded to these conventions they have been steadily taking steps to contribute as much as possible to turning them into an instrument for developing equal international co-operation in the interests of all states in the fields of culture, science and education. This contribution was particularly obvious during the Stockholm Conference of 1967.

Crisis situations arose in the development of the international system of copyright protection as a result of the different positions of the countries concerned. The last crisis of this kind was in evidence between 1967 and 1971, and the Paris diplomatic conferences of 1971 had the object of overcoming it.

[1] *Copyright Bulletin*, 1971, Vol. V, No. 4, p. 7.
[2] *Ibid.*, 1978, Vol. XII, No. 2, p. 3.

2. Russia's Participation in International Copyright Protection

Although the first legislative acts on copyright in Russia were the statute of censorship and the statute on the rights of the author of 1828 [1] problems of international protection of Russian editions had practically arisen even in the precedent period when protection was based exclusively on a system of privileges granted by the State to a specified printing-house for the purpose of book publication.[2]

The first reported case of this kind was connected with the activities of the Academy Press. In 1732 a foreign competitor started selling in Russia reprints of its editions. At the request of the Academy, Empress Anna by a special decree of October 26, 1732 forbade the importation of such books into Russia.[3]

Three years later (in 1735) another book, also in German, was reprinted from the Academy's edition by the printer Johann Adam Schmidt of Nuremberg. Although the academic original enjoyed no protection in Germany the Russian envoy, at the request of the Academy, appealed on this issue to Emperor Charles VI, referring to the losses caused to the St. Petersburg Academy by such reproduction of its editions. "It is not known whether for political motives or for reasons of international courtesy that the Emperor issued a rescript to the book commissioner ordering him to confiscate the edition and forbidding for good re-

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[1] They were revised and supplemented by the law of 1830. For greater detail see M. V. Gordon. The History of Copyright in Russia. *Transactions of the Kharkov Institute of Law*, 1948, Issue 3, pp. 171-192 (in Russian).

[2] G. F. Shershenevich. *Copyright in Literary Works*. Kazan, 1891, p. 120, et seq. (in Russian).

[3] The Academy reported in its complaint that a book in German reprinted at Lübeck from an original of the Academy of Sciences by the printer Aschmus Kohn had been brought to St. Petersburg for sale. This was detrimental to sales of books of the Academy and to Her Majesty's interests. The Academy referred to other similar reprints which were available to it and requested an interdiction of their importation and sales. The request was granted. See A. Pilenko. *International Literary Conventions*, p. 490. See also P. D. Kalmykov. *On Literary Property in General and on the History of Copyright in Russia in Particular*. St. Petersburg, 1851, p. 39 (in Russian).

prints of any books first published at St. Petersburg."[1] "This fact merits attention," A. A. Pilenko noted, "as a prototype of the contemporary protection of foreign authors."[2]

The correspondence of Alexander Pushkin, whose name is associated with Russia's first copyright law, contains his comments relating to international protection for copyright.

In December 1836 the then French envoy Barante in a letter to Pushkin asked him for various information about the protection of literary property in Russia, in particular, concerning the application of corresponding laws to foreign authors.

In 1923 Pushkin's original letter of reply to Barante was found. The poet wrote it on December 16, 1836, six weeks before his death.[3] Concerning international protection, the poet wrote that counterfeit of foreign books was not and could not be forbidden. "Russian book-dealers can always make big profits by reprinting foreign books they can always sell even without export, while a foreigner cannot reprint Russian works because of the absence of readers."[4] Pushkin's prediction, however, did not come true, primarily due to the popularity of his own works. As far back as 1857, Nikolai Chernyshevsky, a well-known Russian writer and critic, expressed the directly opposite view. Analyzing the treaty of commerce and shipping with France of 1856, whose Article 23 provided for the conclusion of a special convention for the protection of literary property, he wrote in the magazine *Sovremennik* that such protection was of no less interest to Russian authors than to their French colleagues, since almost as much was translated from Russian into French as from French into Russian.[5]

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[1] P. D. Kalmykov. *Op. cit.*, p. 72. In 1735 Prince August of Saxony granted a special privilege to the Academy, forbidding production and sales in the territory of Saxony of reprints of books published by the Academy (*Op. cit.*, pp. 72-73).

[2] A. Pilenko. *International Literary Conventions*, p. 491.

[3] A. S. Pushkin. *Complete Works*, Vol. X. USSR Academy Press, 1949, pp. 607-609 (the letter was written in French).

[4] *Ibid.*, p. 874.

[5] *Sovremennik* (The Contemporary), 1857, No. 9; N. G. Chernyshevsky. *Collected Works*, Vol. 4. Goslitizdat Publishers, 1948, pp. 816-817 (in Russian).

The first literary convention concluded by Russia with a foreign state was the Convention with France "On Literary Property" signed on March 25 (April 6), 1861. An analogous convention was signed with Belgium on July 18 (30), 1862.[1] The conclusion of these two conventions was largely due to political motives.[2] In the opinion of F. F. Martens, they "were called to life by quite unusual circumstances and are exotic plants which have no resources for life and growth on Russian soil".[3]

Analysis of these conventions, primarily the convention with France, shows that they were of small importance. The convention with France forbade on a basis of reciprocity unauthorized reprinting and reproduction or counterfeiting of works originally published in Russia or in France (Article 1). Thus, as far as literary works were concerned, it was a matter of forbidding publication of books in another country in the language of the original, which could practically occur in rare cases. The convention itself contained no provision for granting authors or publishers an exclusive right of translation. Article 1 of the Convention granted editions published in another country the same protection that was enjoyed by national authors. In view of the fact that in Russia in that period full freedom of translation was granted save for definite exemptions for scientific works, the conclusion was clearly

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[1] See the text of the Convention with France in *Recueil Dalloz 1861*, IV, p. 63; *Dr. aut.*, 1888, p. 122; *Clunet*, 1887, p. 254; 1892, p. 116. For the text of the Convention with Belgium see *Dr. aut.*, 1888, p. 122; *Clunet*, 1892, p. 116.

[2] The proposals of Italy and Germany for the conclusion of a convention were not accepted, although the possibility of such a convention with Italy was provided for in Article 21 of the 1863 treaty of commerce between Russia and Italy. As evidenced by F. F. Martens, opposition to a convention with Germany was particularly strong. "The opinion that to conclude a literary convention with Germany would be the same as to kill all our translated literature became a truism among us" (F. F. Martens. *International Law of Civilized Nations*, Vol. II, p. 233, in Russian). The talks with Italy in 1865 and with Prussia in 1869-1870 produced no result (F. F. Martens. *Op. cit.*, p. 160).

[3] F. F. Martens. *Op. cit.*, p. 239. The very idea of concluding conventions of this kind aroused objections, especially as regards possible restrictions on the rights of Russian theatres to stage musical and dramatic productions of French writers and composers without their authorization and payment of compensation (*Ibid.*, pp. 245-246).

made in the literature to the effect that even with the existence of the convention translations of French works in Russia were not limited by any conditions.[1]

The Convention contained no provisions concerning dramatic and musical works, which gave rise to numerous heated debates.[2] In the Convention the term of protection was 20 years after the death of the author, which was discrepant with both Russian and French legislation of that time. The Conventions with France and Belgium were concluded for 25 years. Upon the expiration of that term they were not renewed.[3]

In view of the expiration of the term of Russia's Convention with France and the conclusion of the Berne Convention in 1886 there was a wide discussion in the press in the late eighties and early nineties of the last century of Russia's possible entry to the Berne Union. Arguments in favour of this were presented by well-known Russian experts in international law—F. F. Martens, later L. A. Kamarovsky, P. Y. Kazansky and in circumstantial detail by F. F. Martens' disciple A. A. Pilenko.[4] Views of this kind had also been expressed in Russia before.[5]

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[1] For greater detail see I. G. Tabashnikov. *Literary, musical and artistic property*. St. Petersburg, 1878, Vol. 1, p. 481; G. Dzhanshiyev. The Legal Aspect of the Literary Convention with France. *Russkiye Vedomosti* (Russian News), 1894, No. 26; A. Pilenko. *International Literary Conventions*, pp. 195-198.

[2] F. F. Martens. *International Law of Civilized Nations*, Vol. II, p. 250, et seq.

[3] A. Pilenko wrote in this context: "The Russo-French Convention condemned in loud words what had never existed, while carefully avoiding problems which were really the most painful point in the matter under discussion and constituted real counterfeit with all its ruinous and antiaesthetic consequences" (A. Pilenko. *International Literary Conventions*, pp. 197-198).

[4] F. Martens. Russia and the Literary Community of the West European Nations. *Vestnik Yevropy* (European Herald), March 1881, Vol. II, pp. 255-256; *International Law of Civilized Nations*, Vol. II, pp. 144-145; L. Kamarovsky. On the Institution of a Literary Union Between States. *Russkaya Mysl* (Russian Thought), 1887, No. 10; P. Kazansky. *International Union for the Protection of Literary and Artistic Property*. Odessa, 1897, pp. 96-98; A. Pilenko. *International Literary Conventions*; The Problem of the Literary Convention. *Zhurnal Ministerstva Yustitsii* (Journal of the Ministry of Justice), 1898, No. 1, pp. 61-96 (separate edition, St. Petersburg, 1898). (All in Russian.)

[5] According to evidence by V. E. Grabar, the first work on the matter in question in Russia's juridical literature was V. N. Lesh-

In the opinion of F. F. Martens, "the right of literary property of foreigners must be respected in Russia regardless of the number of Russian compositions printed or translated abroad".[1] What was more, he believed that full freedom of translation had a number of negative consequences, in particular, bad translations and unfair competition between publishers. The situation in the field of protection of literary property in Russia "is unenviable and makes us a target, unfortunately, of perfectly justified criticisms and accusations from West European nations. However, we cannot deny the lawful right of a foreign author in his work; we *cannot* remain aloof from the intellectual life of the West European nations; we *must not* take pride in our exclusion from the literary community of civilized nations."[2]

F. Martens substantiated protection of the rights of foreign authors by ethical considerations, P. Kazansky, by the principle of reciprocity, A. Pilenko, by the need to prevent publication of Russian editions abroad in distorted form, to improve publication of foreign works in Russia, advance the standards of translation, and some other motivations. In the opinion of A. Pilenko, Russia's membership of the Berne Union would contribute to the development of science, literature, and public education in Russia.[3]

On the other hand, representatives of publishers and book-dealers, interested as they were in preserving full freedom of translation, took various steps to prevent Rus-

kov's The Question of Literary Property from the Viewpoint of National Law. *Yuridicheskiye Zapiski* (Journal of Law), 1841, Vol. 1, pp. 222-223). V. N. Leshkov advocated international law protection of literary property. "Domestic legislation is not sufficient; it is necessary to enforce protection of authors' rights within alien borders. Through this the question of literary property is transferred into the sphere of national law." (Quoted from V. E. Grabar. *Materials for the History of Literature on International Law in Russia (1647-1917)*. USSR Academy Press, 1958, p. 273, in Russian.)

[1] F. Martens. Russia and the Literary Community of the West European Nations. *Vestnik Yevropy*, March 1881, Vol. II, pp. 255-256.

[2] *Ibid.*, p. 260.

[3] A. Pilenko. *International Literary Conventions*, pp. 511-544; Communication sur la protection de la propriété littéraire et artistique en Russie. *Bulletin de la Société de Législation Comparée*, 1897, Vol. 26, pp. 137-146.

sia's participation in any conventions. Among them was the note on abrogation of the literary conventions with France and Belgium sent to the Minister of Foreign Affairs by the Russian Society of Book-Dealers and Publishers on April 30, 1885.

The note presented the conclusion that both Conventions had "caused damage to both the authors and society", that they were advantageous only to the foreign contractors, primarily the French publishers, since Russia was a consumer. The note summed up by saying that it was "generally too early to enter into international copyright arrangements, the more so as domestic legislation on copyright is inadequate".[1]

As was pointed out above, these Conventions were not renewed. A number of articles published at that time upheld the view that it was inexpedient for Russia either to accede to the Berne Convention or to conclude bilateral arrangements. This view was expressed in concentrated form in an article by I. I. Yanzhul. He wrote that the Russians borrowed and translated from all European languages, in the scientific field in particular, and "in return for all these hundreds if not thousands of translations annually" national literature gave just a few belles-lettres works translated into French and other foreign languages. Yanzhul concluded: "The interest of a small group of Russian authors cannot compensate for harm to the interests of the enlightenment of the whole Russian people in the event of ending the right of free translation and hence the access to many thousand works of foreign genius and art."[2] Advocates of the opposite view were not numerous.[3]

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[1] *Knizhny Vestnik* (Book Herald), 1887, No. 11, p. 508. See also B. Bessel. Concerning Rumours about a New Convention with France on the Protection of Literary and Artistic Property. *Muzykalnoye Obozreniye* (Musical Review), 1887, No. 30; *Clunet*, 1886, p. 438; *Dr. aut.*, 1888, p. 122; 1899, pp. 43-45.

[2] I. I. Yanzhul. Concerning Rumours about a New Literary Convention. *Russkiye Vedomosti*, 1891, No. 112.

[3] It was expressed in particular in A. F. Fyodorov's interesting but little-known work (A. F. Fyodorov. *On the Question of a Contemplated Resumption of the Convention with France on Literary and Artistic Property*. Odessa, 1891, in Russian). Concerning the desirability of Russia's participation in an international convention see

A further polemic on this issue was resumed in Russia in connection with the publication of an open letter to the Russian literary community by Émile Zola,[1] whose works were widely translated and published in Russia. As President of the Literary Society of France Zola appealed directly to members of the literary community, calling on Russia to conclude a literary convention. He pointed out that a large number of Russian works were translated in France ("there is a reciprocity, which is exclusively to your credit"). Speaking of the poor standards of translations in Russia, he referred to fourteen competing editions of *La Débâcle* having appeared in Russian simultaneously and the pollution of the Russian market with translations of inferior quality to the detriment of national literature. In Zola's opinion the root cause of all these abnormalities was the absence of copyright protection. Zola's appeal, similar steps by other personalities,[2] and statements in the press by supporters of international copy-

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also V. D. Spasovich. *The Rights of Authors and Counterfeit.* St. Petersburg, 1885; The Right of Literary Property. *Collected Works*, Vol. III, St. Petersburg, 1890, pp. 395-401 (both in Russian); A. I. Lykoshin. On Literary Conventions. *Vestnik Prava* (Law Herald), 1899, No. 3, pp. 1-56 (report in the St. Petersburg lawyers' society, in Russian).

[1] Zola's letter was published in the newspaper *Temps* on December 24, 1893; for the Russian translation see *Novoye Vremya* (New Times), December 15 (27), 1893, No. 6394; I. D. Galperin-Kaminsky. *The General Benefits of Copyright.* St. Petersburg, 1894, pp. 1-6 (in Russian); the letter gave rise to numerous comments, mostly critical. See, for instance, A. P. Malyshinsky. International Protection of Literary Works (regarding Emile Zola's open letter to the Russian literary community). *Russky Vestnik* (Russian Herald), February 1894, pp. 231-251; I. Yanzhul. Public Education Tax. *Russkiye Vedomosti*, January 14, 1894, etc.

[2] Reports by Galperin-Kaminsky, a translator of I. S. Turgenev and Leo Tolstoy into French (I. D. Galperin-Kaminsky. *The General Benefits of Copyright.* St. Petersburg, 1894, in Russian); visit to Russia in 1903 by presidents of French authors' organizations. Galperin-Kaminskij. Le droit d'auteur en Russie. *Dr. aut.*, 1899, pp. 40-42. The campaign in the French press was accompanied by an appeal to the tsar as well as by diplomatic pressure (*Dr. aut.*, 1894, p. 23; 1898, p. 76; *Dr. aut.*, 1905, p. 65). Attempts to popularize the idea of literary conventions had also been made earlier. For instance, the French Society of Literary and Artistic Property delegated Count Kératry to visit St. Petersburg for this purpose (Mission de M. de Kératry en Russie). *Dr. aut.*, 1890, No. 5, p. 100). See P. Kazansky. *International Union for the Protection of Literary and Artistic Property*, p. 55 (in Russian).

right protection had no effect. As A. Pilenko testified, "this ... attempt ended in a total defeat for advocates of the idea of international arrangement".[1]

The same arguments as before were put forward in support of a negative attitude to conventions. The very same I. I. Yanzhul wrote, for instance: "What matters to us is not so much the merits of a translation or the outward aspect of an edition as the cheap prices and distribution of books among the people, which is facilitated best of all precisely by Russia's uninvolvement in such conventions."[2] The question of conventions was discussed in connection with the drafting in Russia of a new copyright law, which was promulgated in 1911. Relations of copyright had earlier been regulated by the Statute of Censorship of 1828 as well as by individual enactments and were inadequate.[3] This legislation provided for full freedom of translation of both Russian and foreign authors.[4] The possibility and desirability of the conclusion of literary conventions by Russia were considered during the drafting and discussion of the new law[5] in the State Duma and the State Council.[6] As a result a number of

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[1] A. A. Pilenko. The Problem of the Literary Convention. *Zhurnal Ministerstva Yustitsii*, 1898, No. 1, pp. 61-62.

[2] I. Yanzhul. Public Education Tax. *Russkiye Vedomosti*, January 14, 1894.

[3] For greater detail see Y. A. Kantorovich. *Copyright in Literary, Musical, Artistic, and Photographic Works.* Petrograd, 1916, pp. 54-56 (in Russian); M. V. Gordon. The History of Copyright in Russia. *Transactions of the Kharkov Institute of Law*, Issue 3, 1948, pp. 185-190 (in Russian).

[4] One exception was the rule forbidding to print the original together with a translation introduced on Alexander Pushkin's insistence. This question arose in connection with the reprinting in St. Petersburg of a German translation of "The Captive of the Caucasus" together with the Russian original (A. S. Pushkin. *Comlete Works*, Vol. X, pp. 231-232, 236-237). About this see S. Hessen. *Alexander Pushkin in Publishing.* Leningrad, 1930, p. 43 (in Russian).

[5] In particular, a special report on literary conventions was delivered at the First All-Russia Congress of Publishers and Book-Dealers in 1911 (*Proceedings of the First All-Russia Congress of Publishers and Book-Dealers.* St. Petersburg, 1909, pp. 146-154; *Copyright. A report of a commission of the St. Petersburg Literary Society on the draft copyright law.* St. Petersburg, 1908). (Both in Russian.)

[6] Y. A. Kantorovich. *Op. cit.*, pp. 85-99 (in Russian).

articles in the law was formulated to take account of individual provisions of the Berlin Act of the Berne Convention.

In the copyright law adopted on March 20, 1911 the rule concerning the rights of foreign authors was contained in Article 35[1] which stipulated that "literary works of foreign subjects published abroad may be published in Russia in translation into Russian or other languages without a license from the authors or their assigns, unless otherwise agreed in a copyright protection treaty between Russia and a foreign state concerned". It was emphasized at the same time that "foreign subjects cannot be granted on the basis of such treaties greater protection than that enjoyed by Russian subjects in accordance with national law".[2] Within these limits the "exclusive right of translation of works published abroad may be granted to foreign subjects only on condition of equal protection of Russian subjects in the contracting state". The drafting of the law of 1911 was closely connected with the conduct of negotiations for concluding bilateral arrangements in this field. As was noted above, various attempts, primarily on the part of France (through diplomatic channels in particular), to enter into negotiations with Russia for the conclusion of another literary convention were to no avail. When concluding a treaty of commerce with France in 1905, however, the Russian government had "to make a concession and promise to embark on the conclusion of a convention after the promulgation of a new copyright law".[3] The Convention was signed on November 29, 1911

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[1] For the text of the law, drafts and other materials see A. Pilenko. *The New Copyright Law.* St. Petersburg, 1911. The law had no great practical importance, since it came into force in 1914 and was abolished by the Great October Socialist Revolution.

[2] It was meant that the exceptional right of translation in Russia belonged to the author if a copyright reservation was made on the title page or in the foreword. The duration of this right was 10 years after first publication on condition that the translation would be published within five years of first publication (Article 33).

[3] Y. A. Kantorovich. *The Franco-Russian Convention for the Protection of Literary and Artistic Works.* St. Petersburg, 1912, p. 8 (in Russian). Even earlier similar obligations had been assumed in relation to Germany (in the treaty of commerce of June 15-28, 1904) and later to Austria-Hungary (in the treaty of commerce of February 2-15, 1906). In 1906 the United States also raised the question of concluding a copyright protection agreement.

and ratified on April 10 (23), 1912. It came into effect on October 30 (November 12), 1912, while the Convention with Germany concluded in 1913 became effective on August 1, 1913.

Although these Conventions were in force during a limited period of time, it may be worthwhile to analyze their content to see how they were influenced by the provisions of the Berne Convention.[1] In both Conventions Article 1 in accordance with the main principle of the Berne Convention contains a rule assimilating foreign authors to national authors (national treatment). In addition to national protection foreign nationals were afforded advantages specified in the arrangement. The Conventions were based on the principle of territoriality since they gave protection to works published in the territories of the contracting states regardless of the nationality of their authors.

Besides, the Conventions took account of the principle of nationality, since protection extended to nationals of the contracting states, who had published their works "in a third state", i.e., outside Russia and France. This addition was incorporated on Russia's suggestion in the arrangement with France. This was motivated by the fact that under the law of March 20, 1911 copyright was recognized in the Russian authors with regard to works they had published abroad.[2]

The concept of publication was explained in the Russo-German Convention (Article 1.3) but was not presented in the Franco-Russian Convention.

The list of protected works was tentative, and it was more detailed in the Franco-Russian Convention. The reason for this was the absence of such a list in French national legislation. In contrast to the Berne Convention (the Berlin Act, Article 2) and the Law of March 20, 1911,

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[1] For the texts of the arrangements and commentaries to them see Y. A. Kantorovich. *The Franco-Russian Convention...*; *The Russo-German Convention for the Protection of Literary and Artistic Works*. St. Petersburg, 1913. A special Interdepartmental Council under the Ministry of Justice was set up to examine the French draft of the Convention and prepare a counter-draft. Its materials are adduced in the aforementioned works and used in the present study.

[2] Y. A. Kantorovich. *The Franco-Russian Convention...*, pp. 23-24.

the list of protected works included for the first time cinematographic works "having the property of independent and original productions" (Article 2 of the Franco-Russian Convention).

The question of the right of translation was resolved as follows: the exclusive right of translation was to be reserved by the author, was protected during 10 years after the publication of the original and had to be exercised within 5 years after that day. Thus, both Conventions embodied the principle, proclaimed in Article 35 of the Law of March 20, 1911, to the effect that foreign nationals were not granted greater protection than Russian authors.

Article 3 of the Franco-Russian Convention formulated this provision as follows: "The authors of each of the two countries shall enjoy in the other country until the expiration of 10 years" since the time of publication of their original work "the exclusive right to translate that work or authorize other persons to translate that work on condition that they have notified reservation of this right on the title page or in the foreword" to that work. The exclusive right of translation is terminated if the author during 5 years since the publication of the original has not used that right through publication or licensing the publication of a translation of his work.

It should be noted that the aforesaid Special Council, meeting the requests of the Academy of Sciences and the Literary Society, proposed that the right of translation should be restricted only with regard to works of fiction, while preserving full freedom of translation of scientific and technical works, as well as works intended for instructional purposes. This proposal, however, was rejected at the negotiations, where it proved possible to secure only a reduction in the term of the exclusive right of translation of scientific and technical works to three years.[1]

It was also provided that the translator had copyright in his translation.

Another essential question resolved in the Conventions was that of public performance. Article 9 of the Franco-Russian Convention contained the provision that "the authors of dramatic or musico-dramatic works, regardless

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[1] Y. A. Kantorovich. *The Franco-Russian Convention...*, p. 33; *The Russo-German Convention...*, p. 23.

of publication, shall be protected against unauthorized public performance of their works; in the case of an original for the duration of their copyright in that original, and in the case of a translation for the duration of their right of translation".

This article differed essentially from the original text of the French draft which established protection of all works for the duration of copyright, i.e., for fifty years.

With regard to musical compositions the Franco-Russian Convention provided for protection of the authors against unauthorized public performance of their compositions if they notified a reservation on each printed copy (Article 10), i.e., the corresponding rule of the Law of March 20, 1911 was practically reproduced.

Reproduction and public performance of musical works by means of mechanical instruments without the author's consent were forbidden, on condition, however, that exemptions and restrictions were established in the national legislation of the country where protection was claimed (Article 11 of both Conventions). This article provided for the possibility of granting compulsory licenses in Russia (Article 42.2 of the Law of March 20, 1911); in France, however, no such licenses existed. In Germany under the law of 1901 licenses were permitted; therefore, Russian and German composers were granted more or less analogous protection.[1]

It was also provided that "reproduction of literary and artistic works by means of cinematography or by any other means analogous to it shall not be allowed without the author's consent" (Article 13 of the Franco-Russian Convention).

Quite important were the provisions in the Conventions concerning the term of protection determined by the legislation of the country in which protection was claimed. A work, however, was not to be protected for a longer period than that established by the law of the contracting state of which the author was a national or in which his work was first published.

An interesting solution was given to the question of extending the operation of the Conventions to works published before they entered into effect. Article 17 of

[1] Y. A. Kantorovich. *The Russo-German Convention...*, p. 33.

the Franco-Russian Convention made provision for extension of the Convention to all works in which copyright had not been terminated by the law of the state where they had been published.

Thus, the Franco-Russian Convention applied to two types of works: 1. Works published after its entry into force. 2. Works published earlier but still protected by copyright in accordance with national legislation.

At the same time, the Convention made direct provision that foreign works which had been published before it came into effect could not be an object of judicial relief based on the provisions of the Convention.[1]

Characteristically, both Conventions granted most-favoured-nation treatment if one of the parties signed a treaty with a third state providing for greater privileges and advantages in protection of literary and artistic works. This treatment, however, was conditional on reciprocity. There was one essential exemption: the most-favoured-nation clause did not apply to the benefits and advantages accorded by the Berne Convention.

The Conventions were concluded for short periods: for three years with France and for five years with Germany. In Russia this was explained by the fact that the conclusion of such conventions was largely a novelty, there was no adequate practice in the application of the new Russian copyright law, while the French legislation was incomplete and lacked a uniform copyright law.[2] As evidenced by Y. A. Kantorovich, the Convention was more advantageous to France. This was attributable primarily to a large number of works (especially in dramaturgy) translated in Russia, as well as to greater protection available to French authors in Russia than to Russian authors in France because of the inadequacy of French legislation. According to I. S. Peretersky's estimates, after 1912 (when the Convention with France entered into force) the prices of books translated from French rose by an average of 20 per cent. Until 1912

[1] It was provided also that if an edition (of many volumes, in instalments) had been started earlier, such edition might be completed within a year of the Convention taking effect, i.e., the remaining volumes might be published.

[2] Y. A. Kantorovich. *The Franco-Russian Convention...*, pp. 59-60.

translations from French which had flooded the Russian book market were relatively cheap because the authors were not paid royalties.

The conventions with Belgium (1913) and Denmark (1915)[1] were modelled on those discussed above.

All these bilateral arrangements became null and void as a result of expiration of their terms or denunciation by the Soviet state of such international agreements concluded by the tsarist government.

Thus, in the field of international copyright protection Russia followed the line of concluding bilateral arrangements with foreign states, although they were not implemented in practice. At the same time, during a discussion of these questions the idea was expressed to the effect that it would be more expedient for Russia to accede to a multilateral convention such as the Berne Union[2] at the time and that the conclusion of bilateral arrangements would inevitably result in levelling off the systems of protection applied.

[1] The conventions with Belgium and Denmark came into force in 1915. Talks for the conclusion of conventions were also started with Italy, Britain, Sweden, and Norway.

[2] For greater detail see *Pravo* (Law), 1912, No. 16, pp. 910-911.

Chapter 3

MULTILATERAL INTERNATIONAL COPYRIGHT CONVENTIONS

1. Participation of States in Multilateral Conventions

Originally the Berne Union of 1886 consisted of 10 states. In 1977 71 states were party to the Berne Convention. On March 1, 1978 the following countries were affiliated in the Berne Union: Argentina, Australia, Austria, the Bahamas, Belgium, Benin, Brazil, Britain, Bulgaria, Cameroon, Canada, Central African Empire, Chad, Chile, the Congo, Costa Rica, Cyprus, Czechoslovakia, Denmark, Egypt, Fiji, Finland, France, the FRG, Gabon, the GDR, Greece, Hungary, Iceland, India, Ireland, Israel, Italy, the Ivory Coast, Japan, Lebanon, Libya, Liechtenstein, Luxembourg, the Malagasy Republic, Mali, Malta, Mauritania, Mexico, Monaco, Morocco, the Netherlands, New Zealand, Niger, Norway, Pakistan, the Philippines, Poland, Portugal, Romania, the SAR, Senegal, Spain, Sri Lanka, Surinam, Sweden, Switzerland, Thailand, Togo, Tunisia, Turkey, the Upper Volta, Uruguay, Vatican, Yugoslavia, Zaire. Of the larger states the USSR and the USA are not members of the Berne Union.

Different countries signatory to the Berne Convention are bound by its different Acts depending on which of them it ratified.[1]

The Berne Convention is an open multilateral international agreement, to which any state may accede.[2]

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[1] As said in the foregoing, the Stockholm Act (its material law norms) did not enter into effect. The Paris Act of 1971 was acceded to by 40 countries and came into force on October 10, 1974.

[2] A state which has acceded to one of the Acts is bound by the preceding Acts of the Convention. A resolution of the Standing Committee of the Berne Union on this issue said that "the

The Berne Convention permits reservations on accession, which may refer to the material law norms of the Convention itself, the provisions for the procedure of examination of disputes concerning the interpretation or application of the Convention. In ratifying the Stockholm and Paris Acts any country may retain the benefit of the reservations it has previously formulated. Similarly, any country outside the Union may declare, in acceding to this Convention, that it intends to substitute, "temporarily at least, for Article 8 concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as completed at Paris in 1896..." (Article 30.2b). Thus, it is a question of the reservation concerning the right of translation, which provides for termination of the exclusive right of translation into a language or languages, as the case may be, in general use in the said country if the author has not availed himself of that right within 10 years of the date of first publication.

Any country may declare in its instrument of ratification or accession that this Convention shall be applicable to all or part of those territories, designated in the declaration, for the external relations of which it is responsible (Article 31). It should be noted, however, that this provision of the Berne Convention has fallen out of date, as it contradicts the UN General Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514/XV of December 14, 1960).

The Berne Convention has no limitation as to time. Any country, however, may withdraw from the Convention by notifying of its denunciation, which shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union. Denunciation shall take effect one year after the day on which the Director-General of the World Intellectual Property Organization (WIPO) has received the notification. The right of denunciation shall not be exercised by any country before the expira-

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accession of any country to the Union on the basis of a later convention act should be considered in appropriate cases as accession to the preceding Acts in the absence of a special declaration to the contrary" (*Dr. aut.*, 1952, No. 8).

tion of five years from the date upon which it becomes a member of the Union.

The Convention provides for the settlement of disputes concerning its interpretation or application by bringing them before the UN International Court of Justice. The Stockholm Act provides for the possibility of each country to declare that it does not consider itself bound by the provision concerning the settlement of disputes.

The member states of the Union are free to enter into agreements between themselves independently as long as these provide for wider protection and do not contradict the Berne Convention.

The Universal Copyright Convention of 1952 affiliates 72 states (originally 12). On March 1, 1978 they were as follows: Algeria, Andorra, Argentina, Australia, Austria, the Bahamas, Bangladesh, Belgium, Brazil, Britain, Bulgaria, Cambodia, Cameroon, Canada, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Fiji, Finland, France, the FRG, the GDR, Ghana, Greece, Guatemala, Haiti, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Kenya, Laos, Lebanon, Liberia, Liechtenstein, Luxembourg, Malawi, Malta, Mauritius, Mexico, Monaco, Morocco, the Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, the Philippines, Poland, Portugal, Senegal, Spain, Sweden, Switzerland, Tunisia, the USA, the USSR, Vatican, Venezuela, Yugoslavia, Zambia.

The Universal Convention just as the Convention of Berne is open to accession by other states. In contrast to the latter, however, the Universal Convention permits of no reservations (Article XX).

Accession to the Universal Convention is made by depositing an instrument to that effect with the Director-General of UNESCO. As said in the foregoing, the Paris Conference of 1971 adopted a revised text of the Universal Convention (in force for 25 countries).

Article IX of the Universal Convention should be discussed in greater detail, in view of its great importance. It regulates, on the one hand, the relations between states parties to the Convention of 1952 which have not acceded to the Act of 1971 and, on the other hand, between states which have acceded only to the Act of 1971.

According to Article IX, the Paris Act of 1971 shall come into force in respect of each State three months after that State has deposited its instruments of ratification, acceptance, or accession. Accession to the 1971 Convention by a State not party to the 1952 Convention (i.e., the Geneva Convention) shall also constitute accession to that Convention. It is also provided that after the coming into force of the 1971 Convention no state may accede solely to the 1952 Convention. The purpose of this provision is to assure that relations between all Contracting States are governed by the general text of the Convention, so that the 1971 Convention could eventually substitute for the 1952 Convention.

It is also provided that relations between States party to the 1971 Convention and States that are party only to the 1952 Convention shall be governed by the latter. "However, any State party only to the 1952 Convention may, by a notification deposited with the Director-General, declare that it will admit the application of the 1971 Convention to works of its nationals or works first published in its territory by all States party to this Convention" (Article IX.4).[1]

There is another provision deserving special note: if an instrument of accession is deposited by a state before the 1971 Convention comes into force, such state may make its accession to the 1952 Convention conditional upon the coming into force of the 1971 Convention.

Each Contracting State party to the Universal Convention undertakes to adopt, in accordance with its Constitution, such measures as are necessary to ensure the application of this Convention. It is understood that at the date of depositing by a State the instrument of accession (to the 1952 Convention) that State must be in a position under its domestic law to give effect to the terms of this Convention (Article X).

Article XIII of the Convention provides that any Contracting State may, at the time of deposit of its instrument of ratification, acceptance or accession, declare that this Convention shall apply to all or any of the countries or territories for the international relations of which it is responsible. This article just as Article 31

[1] This statement was made by the Soviet Union as a country for which only the 1952 Convention is in force.

of the Berne Convention is at variance with the present state of international relations. In acceding to the Universal Convention in 1973 the Soviet Union made a special statement to this effect.

The Universal Convention provides that it shall not abrogate multilateral or bilateral conventions or arrangements in effect between two or more Contracting States. In the event of any difference between the provisions of such existing conventions or arrangements and the provisions of the Universal Convention, the latter shall prevail (Article XIX). An exception is made for the American states: the provisions of the conventions between them shall prevail in any event. Hence the provisions of the inter-American conventions in effect before the Universal Convention came into force shall not apply if they contravene its provisions, in which case the latter shall have precedence. The provisions of any new convention or arrangement which may be formulated between two or more American Republics after their accession to the Universal Convention shall prevail over the latter. Thus, the convention or arrangement most recently formulated shall apply between the parties thereto (Article XVIII).

In accordance with Article XV of the Universal Convention a dispute between two or more Contracting States concerning the interpretation or application of this Convention, not settled by negotiation, shall, unless the states concerned agree on some other method of settlement, be brought before the International Court of Justice for determination by it.

The 1971 Paris diplomatic conference of revision of the Universal Convention adopted a new text of the annexed Declaration for Article XVII. This Declaration, as pointed out above, has come to be known as "safeguard clause relating to the Berne Convention". It provides for sanctions against member countries of the Berne Union that would be willing to withdraw from the Union after signing the Universal Convention. The Paris text of the Declaration acknowledges the temporary need of the developing countries to bring the level of copyright protection into line with their cultural, social and economic development.

Paragraph "b" of the Declaration provides that if any

developing country considered as such in accordance with the routine practices of the UN General Assembly has at the time of its withdrawal from the Berne Union deposited with the Director-General of UNESCO a corresponding notification of its claim to be considered as such, the "safeguards" provided for shall not temporarily be applied to it during 10 years (with the privilege of later extension of this term).

2. The Main Problems of Convention Protection of Copyright and Their Resolution in the Berne and Universal Conventions

General problems. The Berne Convention for the Protection of Literary and Artistic Works is the oldest as to the time of its conclusion and the most detailed one as to its content. Its conclusion, just as that of the Universal Convention at a later date, did not result in the evolution of any uniform material copyright. As was pointed out in the literature, it was not a matter of evolving a model law (loi-type) as the general basis for national legislation.[1] The purpose of the Berne Convention is to assure the protection of rights originally granted in one state in the territory of all other states party to the Convention. In the country of origin of a work, i.e., in the country of first publication, protection is accorded, as a rule, by national legislation rather than by the provisions of the Convention. In other words, the purpose of the Convention is to protect the rights of foreign authors. It is a matter for legislation in each state party to either the Berne or the Universal Convention to determine the norms of national copyright law. In a general description of the Berne Convention, however, it should be noted that in contrast to the Convention of Paris for the Protection of Industrial Property[2] it largely consists of norms of material law. The Convention guarantees a definite uniform level of protection to authors in all member countries of the Union.

[1] E. Ulmer. *Urheber- und Verlagsrecht*, S. 76.

[2] For greater detail about the Paris Convention see M.M. Boguslavsky. *Problems of Patent Law in International Relations.* Moscow, 1962, pp. 108-110 (in Russian).

The purposes of the Universal Copyright Convention are formulated in its preamble. This is, first, the desire of the Contracting States "to assure in all countries copyright protection of literary, scientific and artistic works". Second, it is noted that a system of copyright protection expressed in the Universal Convention "will ensure respect for the rights of the individual and encourage the development of literature, the sciences and the arts". Third, it is stated that such a universal copyright system "will facilitate a wider dissemination of works of the human mind and increase international understanding".

Persons protected. The persons who are entitled to protection by the Berne Convention are the authors and their successors in title. The Convention itself, however, contains no definition of the author.[1] It is a matter exclusively for the domestic legislation of the countries concerned to give such definition. Thus, national legislation determines whether a juristic person, for instance, may be considered an author; it also defines the rights of authors bound by relations of employment, etc. The Convention does not explain the concept of successor in title with the exception of heirs. However, in contrast to heirs, other assigns are the main subjects that are primarily eligible to the benefit of protection under the Convention. It has already been noted that these are publishing, television and radio broadcasting, motion picture and other companies of this class. Successors in title are granted the rights of utilization of works, primarily the right of reproduction, diffusion and exhibition of said works. A reference to nationals in the Convention usually implies not only nationals as physical persons but also juristic persons of "corresponding nationality". In accordance with the standards of private international law applied in different states a juristic person in a definite state is considered to be a juristic person instituted under the law of that state or located in its territory. This remark of a general character may be followed by a definition of the range of subjects of protection under the Berne Convention.

[1] The proposal for a definition of the author to be given in the text of the Convention itself made by Italy and Austria at the Brussels Conference was turned down.

First, these are nationals of the countries of the Union who first published their works in one of them (as well as in any country outside the Union, according to the Paris Act), and nationals of the countries of the Union who are the authors of unpublished works.

Second, these are stateless persons domiciled in a country of the Union.

Third, the authors who are nationals of states outside the Union but are habitually resident in a country of the Union.

Fourth, the authors who are nationals of countries outside the Union in respect of works first published in a country of the Union.

As for the author's successors in title, the Convention provides for no restrictions to this effect. Hence, as was pointed out in commentaries to the Convention, the author's successor in title must not necessarily be a national (in the broad sense of the word) of a country of the Union to enjoy protection under the provisions of the Convention. It is enough to secure the original right to protection by the Convention. For example, it is enough for the right to publish a work protected by the Convention to be granted, for instance, to a British publisher whereupon it may be transferred to a US publisher, although the USA is not bound by the Berne Convention.[1]

The question concerning the range of persons eligible to protection and the extent of the rights they are granted can be discussed in greater detail in the context of the concept of the country of origin formulated in the Berne Convention (Article 4). Definition of the concept "country of origin" is in turn intimately related to the so-called formulas of registration. The Stockholm Conference made specific changes both in the system of determination and the content of these concepts. The Brussels Act at first defined the country of origin (Article 4.3) and then set out the formulas of registration, i.e., defined which works were subject to protection under the Convention. This system was first changed in the Stockholm Act, so the range of works covered by the Convention will be discussed in the first place.

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[1] W. Bappert, E. Wagner. *Internationales Urheberrecht*, S. 63-65.

Under the Brussels Act works by nationals of countries of the Union were protected in case of first publication in any of them. Works by such persons published elsewhere were denied protection.

The Stockholm Act altered this provision, and in the subsequent text of the Convention the author's nationality became the universal principle of registration. Article 3.1 (a) of the Paris Act protects authors who are nationals of one of the countries of the Union, for their works, whether published or not.

Further, the Act established the criterion of habitual residence. Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country (Article 3.2).

Thus, the Stockholm and Paris Acts widened the sphere of operation of the Berne Convention. What was more, additional criteria were introduced. In the field of cinematography the criterion for producers is the headquarters (place of business) for juristic persons and habitual residence for physical persons (Article 4.a).

The new Article 5.4 contains a general definition of the country of origin. In the case of works first published in a country of the Union, the country of origin is the one of first publication. A number of provisions define the country of origin in the case of works published simultaneously in several countries of the Union (simultaneous publication is an edition issued in two or several countries within 30 days after the first publication).

In the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection is considered as the country of origin.

In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter is considered as the country of origin.

In the case of unpublished works the country of the Union of which the author is a national is considered as the country of origin. The Brussels Act contains a similar provision. The novel feature as compared with it is that in the case of works first published in a country

outside the Union the country of which the author is a national is considered as the country of origin (Article 5.4). This provision is a logical sequel of the extension of protection to authors who are nationals of the countries of the Union for their works first published outside the Union.

It is also necessary to point out specific cases of defining the country of origin for works published in a country outside the Union or not published at all. In the case of cinematographic works the maker of which has his headquarters or his habitual residence in a country of the Union the latter is considered as the country of origin.

Protection is also granted to nationals of countries outside the Union for works first published in a country of the Union or authors of works published simultaneously in a country outside the Union and in a country of the Union. This provision is applied, in particular, in relation to publication of works of Russian and Soviet authors first published abroad.

At the same time, the Convention provides for a possible restriction of rights in such cases. According to Article 6.1, where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are nationals of the other country and are not habitually resident in one of the countries of the Union. Thus, the Berne Convention permits the application of countermeasures (retortion) in such cases. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

The Universal Convention contains simpler provisions concerning these questions.

The Convention protects published works of nationals of any Contracting State regardless of the place of first publication and works of nationals of states outside the Convention first published in the territory of a Contracting State (Article II).

It was pointed out at the Geneva Conference of 1952 that each state in accordance with its legislation may

assimilate juristic to physical persons. For instance, a state which accords protection to works of its national juristic persons must grant equal protection to works of juristic persons of other Contracting States.

Thus, with regard to published works the Universal Convention provides for the following two criteria:

1. The criterion of nationality for works of nationals of Contracting States, and

2. The criterion of the country of publication for works of nationals of countries outside the Convention.

The Universal Convention just as the Convention of Berne protects only those unpublished works whose authors are nationals of the Contracting States. The Universal Convention allows the Contracting States to widen the range of persons eligible to protection. According to Article II, any Contracting State may, by domestic legislation, assimilate to its own nationals any person domiciled in that State. Therefore, protection under the Convention may be extended to stateless persons. These persons may be granted protection in a different way—by accession of a Contracting State to Protocol 1 annexed to the Universal Convention, which provides that "stateless persons and refugees who have their habitual residence in a State party to this Protocol shall, for the purposes of the Convention, be assimilated to the nationals of that State".

Similarly, the Convention may protect such subjects as international organizations: the United Nations, its specialized agencies, and the Organization of American States (Protocol 2 annexed to the Convention). The protection applies to works published for the first time by these organizations (documents, reports, etc.).[1]

Protected works. The Berne Convention contains a long list of works eligible to protection. It gives, in the first place, a general definition according to which protection extends to every production "in the literary, scientific and artistic domain, whatever may be the mode or form of its expression" (Article 2.1). At the same time, the Berne Convention envisages two groups of protected

[1] Internal acts of such organizations, for instance, the United Nations, provide that the copyright in works produced by an organization belongs to the latter (for greater detail see A. Bogsch. *Op. cit.*, pp. 144-147).

works. The first includes works protected on the basis of the provisions of the Convention itself (jure conventionis protection). Works in this group enjoy the most complete and unconditional protection formulated, as a rule, in the provisions of the Convention. The second group consists of works regarding which it is a matter for legislation in the countries of the Union to exclude them, wholly or in part, from protection.

The overwhelming majority of works belong to the first group: books, pamphlets, dramatic or dramatico-musical works, choreographic works and musical compositions with or without words, cinematographic works to which are assimilated works expressed by a process analogous to cinematography,[1] works of painting, sculpture, architecture, etc.

The second group consists of official texts of a legislative, administrative and judicial nature, as well as official translations of such texts, political speeches, speeches delivered in the course of legal proceedings, and other oral productions. It is a matter for legislation in the countries of the Union to determine the conditions under which such works may be reproduced by the press, broadcast, communicated to the public by wire, when such use is justified by the informatory purpose.

Nevertheless, the Berne Convention provides for the author's exclusive right (jure conventionis) of making a collection of his works mentioned in the foregoing.

It is noteworthy that although the Berne Convention as its title indicates is a convention for the protection of "literary and artistic works", the latter expression includes, as said above, every production "in the literary, scientific and artistic domain", whatever may be the mode or form of its expression (Article 2.1). Thereby the Berne Convention defines scientific works as an independent category of objects of protection.

Let us see how corresponding problems are resolved in the Universal Convention. Its preamble speaks of assuring copyright protection of literary, scientific and artistic works, of encouraging the development of literature, the sciences and the arts. Article I refers to literary, scientific and artistic works. The purpose was to

[1] This implies works shown on TV, etc.

improve not only systematization but also the content of works. In protection of scientific works it is a question of the methods of their creation and the forms of expression specific to scientific creativity. In our view, therefore, the fact that in multilateral conventions scientific works are not dissolved in literary works but equally protected is perfectly justified.[1]

In the literature there is no consensus of opinion concerning the isolation of scientific works as an independent category. A. Bogsch maintains that the use of the word "scientific" is unfortunate. The scientific character of a work has no relevance from the viewpoint of copyright law. A medical book, a statistical chart, a geographical film is protected because it is a book, a drawing, a motion picture, and not because it deals with the science of medicine, statistics, or geography.[2] A. Troller believes that the inclusion of scientific works in the general collective concept "literary and artistic works" is correct. In his opinion, a scientific work does not exist independently of a literary and artistic work from the viewpoint of copyright law.[3] E. Ulmer, as well as the authors of a number of special studies, think differently.

As noted before, the Berne Convention protects all literary and artistic works whatever may be the mode or form of their expression. However, the Stockholm Conference of 1967 introduced into the text of the Convention an addition according to which it is a matter for legislation in the countries of the Union to prescribe that literary and artistic works in general or any specified categories of works shall not be protected unless they have been fixed in some material form (Article 2.2).

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[1] A. Troller calls attention to the fact that at the Geneva Conference the Canadian delegation proposed that the words "scientific works" should be deleted from the draft convention, since they came under the concept of literary and artistic works. The Conference Chairman P. Bolla, arguing in favour of the proposed text, emphasized that it was a question of securing protection of purely scientific works and cited the tables of logarithms as an example. (Quoted from A. Troller, *Immaterialgüterrecht*,[2] Bd. I, S. 373-374.)

[2] A. Bogsch. *Op. cit.*, p. 8.

[3] A. Troller. *Op. cit.*, S. 423. About these problems see M. Kummer. *Das urheberrechtlich schützbare Werk*, S. 105-133.

In contrast to the Convention of Berne the Universal Convention contains neither a long enumeration of protected works nor detailed provisions for protection of individual categories of works. Article I contains a rough enumeration of literary, scientific and artistic works, "including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture".

The Universal Convention contains no mention of oral works, works of applied art and photography. This should not lead one to conclude, however, that works in this category are not protected in general. If such works are protected in a Contracting State the Convention also protects them. It is a matter for national legislation to determine the extent of protection. In these cases the principle of formal reciprocity is applied, since protection for such works is granted regardless of whether or not such protection is enjoyed by the author in his own country.[1]

It is of interest to discuss the question of protection granted by the Berne Convention to such specific works as works of folklore, i.e., artistic works of unknown authors. Protection of such works is particularly important to those Asian and African countries where oral works of folk art constitute the main stock of artistic creations. It was not fortuitous, therefore, that in a discussion of the list of protected works at the Stockholm Conference the Indian delegation proposed that works of folklore should be included in this list.

In the course of the discussion the very idea of devising a system of protection of these works specific from the viewpoint of copyright law was given determined support by the African representatives at the Conference.[2]

It was emphasized at the same time that works of folklore, which were not duly protected, often became objects of unfair use. It was suggested that the countries concerned should be afforded the possibility to set up a specialized agency to represent the author of a work of folklore and protect his rights. The proposal of the Czechoslovak

[1] See S. B. Krylov, A. I. Gorlov. International Copyright Conventions. *Problems of Private International Law.* Gosyurizdat Publishers, 1956, p. 117 (in Russian).

[2] *Actes de la Conférence de Stockholm...*, Vol. II, pp. 891-892, 927-928.

delegation was accepted as the basis for formulating a solution to this problem. A special working group under the direction of the latter delegation drew up a new provision which was incorporated in the Berne Convention to protect works of folklore.

This provision is as follows:

In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union. The Director-General shall be notified by means of a written declaration giving full information concerning the authority thus designated and shall at once communicate this declaration to all other countries of the Union (Article 15.4).[1] It should be underscored that this provision, which was adopted to encourage developing countries to join the Berne Union and which meets their interests, is incorporated in the main body of the Berne Convention rather than in the Protocol Regarding Developing Countries. This is perhaps the only case of its kind.

Conditions for eligibility to protection. In accordance with the Berne Convention, authors entitled to protection enjoy in respect of their works in countries of the Union "the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention" (Article 5.1).

Under the Universal Convention published works of nationals of any Contracting State enjoy in each other Contracting State the same protection as that other State accords to works of its nationals. The Convention as revised at Paris in 1971 provides additionally that works shall enjoy protection specially instituted in the Convention. Article I also proclaims that each Contracting State undertakes to provide for the "adequate and effective protection of the rights of authors and other

[1] In the case of published works of folklore which are thereby listed under anonymous works, protection is accorded by the very same Article 15 which provides that the publisher whose name appears on the work shall be entitled to protect and enforce the author's rights.

copyright proprietors". It does not reveal the content of copyright nor does it contain an exhaustive enumeration of protected works.

The report of the General Rapporteur at the Geneva Conference expressed the opinion of the Conference Chairman to the effect that the rights protected under the Convention should be understood as all rights recognized as belonging to authors in civilized countries but that their enumeration might be dangerous since it might be given a restrictive interpretation.

Although the concept "adequate and effective protection of the rights of authors" is very vaguely expressed in the 1952 Convention, it should not be interpreted to mean that the obligations of states are limited only to the protection of the right of translation directly provided for in Article V of the Convention.

In compliance with the principle of national treatment works of foreign authors protected under the Convention should be accorded the same protection as that established by domestic legislation for analogous works of national authors.

The Universal Convention draws a certain distinction between "published" and "unpublished" works.

In either case protection in another Contracting State will be granted on the principle of national treatment. The difference consists in that works published in the territory of the state "A" will be granted in the state "B" the same protection that the state "B" accords to works in this category, i.e., works of its nationals first published in the territory of the state "B".

Unpublished works of nationals of the state "A" will enjoy in the state "B" the same protection as the state "B" accords to unpublished works of its own nationals.

These two categories of works may differ with regard to their legal status. For example, the domestic law of a number of states requires as a condition of protection of published works compliance with certain formalities, such as their registration. No formalities, however, are required for the protection of unpublished works. No work may be published without the consent of the author or another proprietor of the copyright in that work. A person whose right has been infringed may seek judicial relief to protect his copyright (to demand

termination of publication, payment of compensation, etc.).

The exercise and protection of copyright in the countries of the Berne Union do not require compliance with any special conditions and formalities, such as registration, deposit of copies, etc. Paragraph 2 of Article 5 of the Convention explicitly provides that the enjoyment and the exercise of the author's rights shall not be subject to any formality. Such enjoyment and such exercise shall be independent of the existence of protection in the country of origin. Apart from the provisions of the Berne Convention itself the extent of protection, as well as the means of redress afforded to the author to protect his rights are governed exclusively by the laws of the country where protection is claimed.

Thus, unless provided otherwise in the Convention itself, it is a matter for legislation of the country where protection is claimed to establish such protection, i.e., the collision principle (lex fori) is applied.

The Convention makes no provision for compliance with special formalities as a condition of judicial relief. The only condition stipulated for published works is that the author's name or pseudonym appearing on the work should leave no doubt as to his identity. In the case of anonymous and pseudonymous works where the identity of the author is unknown, the publisher whose name appears on the work is deemed to represent the author.

In the case of cinematographic works it is enough to indicate the name of the physical person or the juristic person acting as the producer.

Without requiring compliance with formalities the Berne Convention makes an exception from the principle of national treatment in favour of persons entitled to protection. The requirement of compliance with formalities in a certain country will not extend to works of such persons. Failure to comply with these formalities will not affect the extent of protection.[1]

The Universal Convention gives a different solution to the question of formalities as a condition of recognition and protection of copyright. In view of the practical importance of this question to each Contracting State it

[1] W. Bappert, E. Wagner. *Op. cit.*, S. 42.

should be discussed in greater detail. One of the circumstances taken into account in compiling the text of this Convention was that the domestic legislation of a number of American states, including the United States, contained rules protecting the local printing industries. This referred to the "manufacturing clause" under which protection in the United States was granted only to English-language works printed in US territory or in a printshop using American equipment.

Further, in the United States and a number of Latin American states there are rules for registration of works, deposit of copies and other similar requirements for compliance with formalities,[1] whereas such rules are non-existent in the European states.

In view of this circumstance, the Universal Convention gives a compromise solution to this question. Article III stipulates that the requirement for formalities under the domestic law of each Contracting State such as deposit, registration, manufacture or publication in that State, etc., shall be regarded as satisfied with respect to all works protected in accordance with the Universal Convention if the formalities provided for in the Convention itself are duly complied with.

As a condition of protection the Convention provides that from the time of the first publication all copies of the work published should bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication.

This provision, however, does not preclude any Contracting State from requiring compliance with formalities in respect of works first published in its territory or works of its own nationals wherever published.

The provisions in the Universal Convention for compliance with definite formalities are valid for those states where such compliance is required as a condition of copy-

[1] According to the rules of registration in force in the United States every edition must indicate the date of publication and be listed in a register. From 1870 to 1972 fourteen million works were registered. More than 300,000 registrations are made annually (see *Annual Report of the Librarian of Congress. For the Fiscal Year Ending June 30, 1971*. Washington, 1972, p. 77). The Pan-American Copyright Conventions also contain requirements for compliance with formalities. For greater detail see T. R. Kupferman, M. Foner. *Op. cit.*, pp. 23-38.

right. Where domestic legislation does not require compliance with formalities protection is granted regardless of compliance with the provisions of Article III.

In addition, the Universal Convention makes special provisions for compliance with the conditions required for judicial relief to protect copyright. Each Contracting State may require compliance with procedural formalities, such as that the complainant must appear through domestic counsel or deposit with the court or an administrative body, or both, a copy of the work involved in the litigation. Failure to comply with such formalities may interfere only with judicial relief but will not affect the validity of the copyright.

In respect of unpublished works the Universal Convention provides that "in each Contracting State there shall be legal means of protecting without formalities the unpublished works of nationals of other Contracting States" (Article III.4).

Paragraph 5 of Article III of the Universal Convention lays down special rules for countries where legislation grants protection for more than one term of copyright. It provides that if a Contracting State grants protection for more than one term of copyright and the first term is for a period longer than one of the minimum periods prescribed in the Convention, such State shall not be required to comply with the provision for exemption from compliance with formalities in respect of the second or any subsequent terms of copyright.

The concept of publication. In the Universal Convention this concept is defined in Article VI. "Publication", as used in this Convention, means the reproduction in tangible form and the general distribution to the public of copies of a work from which it can be read or otherwise visually perceived. It should be emphasized that the article defines the concept "publication" exclusively for the purposes of the Convention, since it differentiates between published and unpublished works.

The aforementioned concept differs from that in the legislation of some Contracting States. In Soviet law, for instance, the concept of publication is wider than the definition in the Convention. In the Soviet Union publication means any communication of a work to the public by whatever means. A work is regarded as published

if it has been printed, performed or exhibited in public, broadcast over the radio or TV. Under the Convention a musical work is regarded as published if it has been published as sheet music, whereas in Soviet law a public performance of a work, even without its publication in the form of sheet music, is in itself considered publication. An example of a different kind may be cited. During the ratification of the Convention in the United States American motion picture producers levied criticism on Article VI, referring to the fact that the Contracting States might consider the visually perceived part of a film as a published work and the sound part as an unpublished work. In the United States a special unofficial interpretation of this question was given to the effect that since Article I mentions cinematographic works, they should be interpreted as an entity including both the image and the sound. Therefore, distribution of copies of a film should be considered the publication of both of the said parts. In a discussion of this question in the US Senate Subcommittee for Copyright it was explicitly pointed out that a sound film was regarded as published since the time copies of the film were made available to the public, and that the provisions of Article VI of the Convention did not imply that the phonogram of a cinematographic work was regarded as publication in the sense of the Convention.

The inclusion of Article VI in the Convention has no object of altering the legislation of the Contracting States because, as was said above, it is exclusively a question of definition of this concept in the sense of the Universal Convention.

The term of protection under conventions. The provisions of the Berne Convention regarding the term of protection of copyright have not remained unchanged. The original text of the Convention provided that the term of protection in foreign states might not be in excess of that established by the national law of the author. For a long term afterwards a rule was in effect which provided that the term of protection was determined by the law of the country where protection was claimed. If this term was longer than that established in the country of origin, however, the latter might be applied. Consequently, the principle of comparison of terms was applied, the least

of which was a kind of a minimum guaranteed by the Berne Convention.

The Brussels Conference formulated a new provision for the term of protection. The minimum term of protection was established at 50 years after the death of the author. Thus, the term of protection granted by the Berne Convention is the life of the author and fifty years after his death. The principle of comparison of terms of protection was left for those cases where the national legislation of the country which granted protection provided for a term longer than fifty years (in Spain, for instance, the term of protection is eighty years). In this case the term is governed by the legislation of the country where protection is claimed.[1]

In the case of anonymous or pseudonymous works, the term of protection granted by the Brussels Act expires fifty years after the work has been made available to the public.[2]

At the same time, the principle of comparison of terms is the sole criterion for determining the term of protection under the Brussels Act for cinematographic, photographic and similar works, as well as works of applied art. For all of them the national legislation of many countries usually provides shorter terms. In these cases the term is governed by the legislation of the country where protection is claimed; however, it does not exceed the term fixed in the country of origin of the work.

The Stockholm Conference introduced further alterations in the provision for the term of protection. First of all, the 50-year term was extended to cinematographic works to run from the time they were made available

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[1] This provision adopted at the Stockholm Conference is worded to emphasize that the principle of comparison of terms has merely an optional character. While the provision for the minimum term is retained, the following is stipulated: "In any case, the term shall be governed by the legislation of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work" (Article 7.8).

[2] However, the general principle (the life of the author and fifty years after his death) is applied if (1) the pseudonym adopted by the author leaves no doubt as to his identity, (2) the author discloses his identity during fifty years after the publication of his work.

to the public with the consent of the author, or, failing such an event, from the time of their making (Article 7.2).

The minimum term provided for in the Convention was applied to photographic works and for works of applied art. It was to last until the end of a period of 25 years after the making of such a work (Article 7.4).

All the provisions concerning the terms of protection apply in the case of joint authorship, the term of copyright running from the death of the last surviving author.

It should be noted in conclusion that the question of the term of protection of copyright was the subject of a long debate at the Stockholm Conference. In view of the definition of the general term of protection the socialist countries took a stand in favour of making provision for shorter terms.[1] Bulgaria and Poland made a joint proposal to the effect that the countries bound by the Rome Act should have the right to maintain shorter terms than those provided for in Article 7 of the Brussels and Stockholm Acts of the Berne Convention. After a prolonged debate this proposal was accepted in the face of opposition from a number of countries, primarily the FRG, which for their part sought a provision for even longer terms than those granted by the Convention. As a result, the Stockholm Act incorporated the following provision: "Those countries of the Union bound by the Rome Act of this Convention which grant, in their national legislation in force at the time of signature of the present Act, shorter terms of protection than those provided for in the preceding paragraphs shall have the right to maintain such terms when ratifying or acceding to the present Act" (Article 7.7). Thus, shorter terms of protection than those directly provided for in the Stockholm Act were maintained for a number of countries.

The Universal Convention just as the Convention of Berne explicitly provides for a minimum term of protection, which, however, is shorter by half. This is, as a rule, a period not less than the life of the author and 25 years

[1] The domestic legislation of a number of socialist countries grants shorter terms than the fifty years provided for in the Brussels Act of the Berne Convention. The Polish law grants a term of 20 years and the Bulgarian law of 1951 did not fix a definite term but protected the interests of heirs in the enjoyment of corresponding rights (*Actes de la Conférence de Stockholm...*, Vol. II, pp. 914-915).

after his death. As an alternative to this term some Contracting States are entitled to grant a term of 25 years from the first publication or from the registration of the work. This provision applies only in those countries where the term of protection is computed from the date of the first publication of the work. These countries may alter their domestic legislation to provide for the computation of terms from the date of the death of the author.

Under the Convention a Contracting State may grant a shorter term of protection for photographic works and works of applied art in so far as they are protected as artistic works. This term should not be less than ten years for each of said classes of works.

The above-mentioned terms are minimum terms. The main principle is that the term of protection is governed by the law of the country where protection is claimed. At the same time, both the Universal and the Berne Convention apply the principle of material reciprocity in this question. No Contracting State is obliged to grant a term of protection longer than that fixed for a given class of published works by the law of the country of first publication.

The work of a national of a Contracting State, first published in a non-Contracting State, is treated as though first published in the Contracting State of which the author is a national. Both the Berne and the Universal Convention provide that in case of simultaneous publication in two or more Contracting States the work shall be treated as though first published in the State which affords the shortest term of protection.[1]

The provisions of the Convention do not specify the date from which the term of protection should be computed. At the same time, the legislation of a number of countries contains special provisions to this effect. In the majority of such countries the term of protection does not run from the date of the death of the author but is computed from the 31st day of December of the current year or from the 1st day of January of the year following the author's death (Austria, Britain, Hungary, Denmark,

[1] In accordance with paragraph 6 of Article IV of the Universal Convention any work published in two or more Contracting States within thirty days of its first publication is considered as having been published simultaneously in said Contracting States.

Zambia, France, the FRG, Ghana, Greece, Ireland, Kenya, Liechtenstein, Malawi, Monaco, New Zealand, Norway, the USSR, Tunisia, Turkey, Uruguay, Pakistan, Poland, Sweden, Switzerland, Yugoslavia, Japan, etc.). In some countries the term is computed from the 1st day of January of the year in which the author died.

The moral rights of authors. The Berne Convention gives little attention to the protection of the moral rights of authors (droit moral). This is the subject of Article 6bis adopted at the Rome Conference and later supplemented at Brussels. As implied in the Convention these rights amount to the right of authorship and the right of inviolability of the work. The latter is expressed in the right of the author to object to any distortion, mutilation or other modification of, "or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation". These rights are granted to the author "jure conventionis".

The procedure of judicial or administrative redress for safeguarding the moral rights granted to the authors by the Convention is governed by the legislation of the country where protection is claimed.

The moral rights are exercisable by the author during his lifetime and maintained after his death in accordance with the Stockholm Act "at least until the expiry of the economic rights".[1] The persons or institutions authorized to enjoy these rights after the death of the author are determined by national legislation.

An attempt to make direct provision for the protection of the moral rights of authors in the Universal Convention was made at the Paris Conference of 1971. Prompted by a proposal of Argentina, the Conference considered whether the rights enumerated in the new Article IVbis (1) should be expanded to include the "moral right" of the author, that is, "the right to claim authorship of a work and to oppose any distortion, mutilation or other change in that work". A number of delegations expressed themselves in favour of the principle that the moral right was one of the fundamental rights of the author. This

[1] The Brussels Act of the Berne Convention provided for the protection of the moral rights of the author exclusively during his lifetime, while their maintenance after his death was governed by the national legislation of the members of the Union.

proposal, however, was turned down with a reference to the fact that a number of Contracting States, the United States in the first place, did not recognize this right under their statutory law.

As a result the Universal Convention incorporated a new article on the basic rights ensuring the author's economic interests. It should be admitted that the absence of a provision for the protection of moral rights in the Universal Convention which makes special provision for the protection of economic interests is a shortcoming of the Convention.

The right of translation. The provision for the exclusive right of the author to translation of his work is one of the main rules of both the Berne and the Universal Convention. The exercise of this right is of great practical importance.[1] The Berlin Conference made in the Berne Convention the following provision which has not been changed essentially in the subsequent revisions: authors enjoy the exclusive right of translation throughout the term of protection of their rights in the original works. Article 8 reads: "Authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works." This rule means that each translation of a work of an author in another member country of the Berne Union should be authorized by the proprietor of the exclusive right. A translation may be published in another country only on terms agreed with the proprietor of the corresponding rights (i.e., primarily on condition of payment of equitable remuneration).

Restrictions of the right of translation may be imposed because the Convention maintains the right of the countries of the Union to reservations in relation to this article.

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[1] The right of translation is the subject of many special studies. See, in particular, G. A. Kudryavtseva. Translation as an Object of Copyright. *Vestnik MGU* (Moscow University Herald), Series XII, "Law", 1968, No. 6, pp. 54-63; The Principle of Freedom of Translation in Soviet Copyright Law. *Vestnik MGU*, Series XII, "Law", 1970, No. 1, pp. 51-58; Z. Radojkovic. Le droit de traduction et le droit des traducteurs. *Dr. aut.*, 1971, No. 10, pp. 190-201; A. Meyer. *Die Regelung des Übersetzungsrechts in nationalen Gesetzen und in internationalen Staatsverträgen.* Zürich, 1956; F. Majoros. Position moderne des problèmes du droit de traduction international. *Revue internationale de droit comparé*, 1971, No. 1, p. 89, et seq.

The members of the Union except developing countries may maintain the original provisions on this question in the Convention, i.e., Article 5 of the Berne Convention of 1886 as completed at Paris in 1896. New members of the Convention may also make a declaration to this effect.[1] In all the states which have made such reservation the author's exclusive right of translation is restricted: it ceases to be maintained if the author has not published a translation of his work into the language of the country which has availed itself of a reservation, during 10 years since his work was published.

With regard to the countries which have retained the benefit of said reservation the principle of material reciprocity applies, while the other countries of the Union may accordingly restrict their protection of the right of translation of works whose country of origin is a country availing itself of such a reservation (Article 30).

In the Universal Convention the right of translation is the only right directly provided for in the original Convention of 1952. "Copyright shall include the exclusive right of the author to make, publish, and authorize the making and publication of translations of works protected under this Convention" (Article V). The right of translation is subject to obligatory protection in all countries; domestic legislation, however, in compliance with the provisions of the Convention, may restrict this right to the possibility of granting a special license.[2]

If, after the expiration of a period of seven years from the date of the first publication of a writing, a translation of such writing has not been published in the national language or languages, as the case may be, of the Contracting State, by the author or with his authorization, the competent authority of such Contracting State may grant any national of that State a license to translate the work into a corresponding language.[3]

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[1] Reservations of this kind are in effect in relation to Iceland, Japan, Mexico, Turkey, and Yugoslavia.

[2] For greater detail see A. Bogsch. *Op. cit.*, pp. 59-67. Such licenses are envisaged, for instance, in the laws of Argentina, India, Japan, Mexico, Yugoslavia.

[3] The Paris Conference of 1971 considered the question of whether it was necessary to specify that the concept of "a national"

Article V of the Universal Convention provides in detail for the procedure of granting a license. It is essentially as follows: the translator is obliged to establish that he has requested, and been denied, authorization by the author to make the translation or that he was unable to find the author. In the latter case the translator should send a copy of his application for a license to the publisher whose name appears on the work or to the diplomatic or consular representative of the State of which such author is a national, or to the organization which may have been designated by the government of that State. If the nationality of the author is unknown it is enough to send a copy to the publisher. The license will not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application.

As regards its content the license is a right of translation exclusively into a specified language and has a strictly personal character, i.e., it shall not be transferred by the licensee. The license is valid only for publication of the translation in the territory of the Contracting State where it has been received.

Copies so published may be imported and sold in another Contracting State party to the Universal Convention if the domestic law of such other State makes provision for compulsory licenses and does not prohibit such importation and sale.

The license is non-exclusive in character, which means that the competent authority may grant an identical license to another translator.

It is important to note that the granting of a license for translation does not affect the author's right to a compensation. According to paragraph 2 of Article V of the Universal Convention, "due provision shall be made by domestic legislation to assure to the owner of the right of translation a compensation which is just and conforms

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(ressortissant) equally applied to juristic persons, governmental organizations, societies and other associations which were subjects at law. This interpretation met with no objections but it was found unreasonable to define this term in the body of the Convention in view of the appropriate interpretation given with reference to Article II at the Geneva Conference.

to international standards, to assure payment and transmittal of such compensation".

Guarantees of a correct translation of the work are also provided. The Convention explicitly prescribes that the original title and the name of the author of the work shall be printed on all copies of the published translation.

The license shall not be granted when the author has withdrawn from circulation all copies of the work.

In the situation of stiff competition among publishers in the capitalist countries publications of various kinds often infringe the above-discussed provisions of international conventions. One typical example is the situation in Japan where pirate editions became common practices in the postwar years. Many publishers translated books without license, often changing their titles and even rehashing their contents. They published them in large printings and made great profits. As evidenced by experts on Japanese affairs, "a fairly long time elapses before a fake is disclosed. The hieroglyphics are a screen which can conceal anything. It often happens therefore that such an operation is never uncovered." Pirate editions have become so frequent in recent years as to be investigated by Japanese government agencies.[1]

As pointed out above, the Stockholm Conference as a result of the efforts of developing countries adopted a special Protocol providing for special treatment to be applied in these countries for the use of the works of nationals of other countries of the Berne Union. The right of translation was restricted by means of granting a license for translation if the author had not published in a given developing state a translation of his work in the language of that state during a period of three years after its first publication.

At the Paris diplomatic conferences of 1971 a number of alterations were made in the provisions of the 1967 Protocol. At the same time, the corresponding provisions were incorporated into the body of the Universal Convention.

The essence of the system provided for in the new articles of the Universal Convention and the Appendix

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[1] J. and V. Winkelhöfer. *One Hundred Views of Japan*. Russian edition. Nauka Publishers, 1968, pp. 327-328.

Protocol of the Berne Convention which has replaced the Protocol of 1967 is as follows: to meet the requirements of developing countries provision has been made for restriction of the right of translation and reproduction of works by introducing a system of compulsory licenses.

Let us examine this system established by the new articles of the Universal Convention in greater detail.

First of all, it is necessary to specify which countries will be granted more privileged terms of using works in accordance with the new Article V^{bis} of the Universal Convention. Any Contracting State regarded as a developing country, in accordance with established practices of the UN General Assembly, shall be entitled to the privileges provided for in the Convention subject to its making a special declaration to this effect to the UNESCO Director-General. This declaration is effective during a period of ten years, but it may be renewed for each of the subsequent 10-year periods.

The new Article V^{ter} of the Universal Convention provides for compulsory licenses restricting the right of translation. Compulsory licenses may be granted only for teaching, scholarship, and research (paragraph 3 of Article V^{ter}), rather than in all cases as it was formerly prescribed in the Stockholm Protocol. A compulsory license enables a work to be translated into the language of a developing country, to publish the translation by printing techniques or any similar method of reproduction.

This article is based on the premise that a definite time has elapsed since the first publication. A compulsory license for translation into the official language or one of the languages, as the case may be, of a developing country may be granted only if no translation of the work into this language has been published during that time.

The term may be three years rather than seven years as is provided for in Article V of the Universal Convention.[1] In the case of translations into a language which is not in general use in one or more developed countries party to the Convention the term is reduced to one year.[2]

[1] It is a matter for legislation in a country to provide for a longer term.

Developing countries secured a reduction of this term in the period of preparation of the Conference.

A developing country may, by agreement with a country party to the Universal Convention in which the same language is in general use, substitute for the period of three years a shorter period but not less than one year. However, the provision of the foregoing sentence shall not apply where the language in question is English, French or Spanish, and therefore loses much of its importance.

We have noted above that Article V of the original Universal Convention prescribes a definite procedure for application to the copyright proprietor for a license for translation and for the dispatch of a copy of this application to the publisher in specified cases. In accordance with this rule, the license shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application.

The new Article V[ter] also provides for compliance with some formalities. First, the applicant for a license should request authorization of the owner of the right of translation and inform the UNESCO International Copyright Centre or the national information centre. If the owner of the right cannot be found the applicant should send copies of his application to the national or international information centre.

In these cases no license obtainable after three years shall be granted until a further period of six months has elapsed, and no license obtainable after one year shall be granted until a further period of nine months has elapsed. These periods are computed from the date on which the applicant makes a request of the owner of the right of translation and if the latter cannot be found, from the date on which the applicant sends copies of his application to the information centre.

A license does not authorize the export of copies and is limited to the territory of the country in respect of which the application was made.[1]

The provision for the payment of compensation is quite important. It is envisaged that a "just compensation" under a compulsory license should be reasonably related

[1] These rules were worked out at the Paris Conferences of 1971 by a joint study group formed by the principal committees of both Conferences.

to compensation normally made under an ordinary license on contractual terms. It is a matter for national legislation to provide for measures to ensure transmittal in convertible currency.

If a translation of a work is published by the owner of the right of translation or with his authorization at a price reasonably related to that normally charged in the country for comparable works, the compulsory license will terminate.

The Paris diplomatic conference also provided that a license for broadcasting the translation of a work may be granted to a broadcasting organization in a developing country but only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession.

The Appendix to the Berne Convention provides for an analogous system of granting compulsory licenses.

The right of reproduction of copies of a work. In the domestic legislation of the countries party to international conventions the right of reproduction of copies of a work by various ways and means is one of the fundamental rights of the author and his successors in title. Until recently, however, the conventions contained no general provision for this right of the author, so the right of reproduction was governed by national legislation. An analysis of the Berne Convention would show that this right was referred to only in special cases. Originally the Berne Convention dealt with this question in connection with articles in newspapers and periodicals.

Along with the development of technology, primarily the technical facilities for the diffusion and reproduction of information, the conferences for revision of the Berne Convention incorporated in it provisions for mechanical reproduction (sound recording) by means of a tape recorder, over the wireless, etc.

After the Brussels Conference of 1948 photographic reproduction of works, especially scientific works, posed some urgent problems. It was mandatory to provide in the Berne Convention for the author's right of reproduction and prescribe definite exemptions from and restrictions of this right.

The Stockholm Conference adopted a general provision, which was later reproduced in the Paris Act of 1971. Paragraph 1 of Article 9 reads: "Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form." Reproduction is understood to be any material fixation of a work, any manufacture in one or many copies. The Convention itself contains no interpretation of this concept. The only explanation is to be found in paragraph 3 of the new Article 9 which says: "Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention."

The question of possible exemptions from this right was the subject of a prolonged debate at the Stockholm Conference. As a result paragraph 2 was incorporated in Article 9 to the effect that it shall be a matter of legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

Thus, the Stockholm Conference was important in this question in that it introduced a general principle while the emphasis in the definition of exceptions was shifted onto national legislation.

The Universal Convention in its original text of 1952 does not explain the concept of reproduction of a work in general but leaves this question to be decided by the domestic legislation of the Contracting States.

The Paris Conference of 1971 incorporated the relevant provisions in the body of the Convention. The Conference included in its text the new Article IVbis which provides that "the rights referred to in Article I shall include the basic rights ensuring the author's economic interests, including the exclusive right to authorize reproduction by any means, public performance and broadcasting". Thereby, as the General Rapporteur pointed out in his report on the Conference results, the new text of the Universal Convention directly referred to three types of exclusive rights: the right of reproduction, the right of production and public performance, and the right of

broadcasting.[1] These rights are defined as fundamental rights, and in accordance with Article I each Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors.

The new Article IVbis also provides that any Contracting State may, by its domestic legislation, make exceptions that do not conflict with the spirit and provisions of this Convention, to the aforesaid rights. It says further that any State whose legislation so provides shall nevertheless accord a reasonable degree of effective protection to each of the rights to which exception has been made.

The Paris Conference of 1971 gave the following interpretation of these provisions. As for the "spirit of the Convention", this implies the undertaking of States to provide for "the adequate and effective protection", as prescribed in Article I, as well as compliance with the principles of Article 27 of the Universal Declaration of Human Rights.

As regards the prescription that exceptions should not conflict with the "provisions of the Convention" it is understood that a country which is not considered as a developing country is not entitled to introduce for itself the system of licenses provided for in Articles V^{ter} and V^{quater}, which will be discussed below.

The last sentence of paragraph 2 of Article IVbis provides for a commitment of States to accord a reasonable degree of effective protection to each of the rights referred to in this article. This was understood at the Conference to imply that no State was entitled to deny protection to the right of reproduction, broadcasting, production and public performance, but it might only make exceptions; nor was it entitled to apply them at discretion. Protection must be really provided for in its domestic legislation.[2]

The rules adopted at these Conferences have been incorporated into the body of the Universal Convention (Article V^{quater}) and in the Appendix Protocol to the Berne Convention. Under these rules compulsory licenses may be granted for the sole purpose of being used in connec-

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[1] *Bull. du dr. d'aut.*, 1971, No. 4, p. 11.
[2] *Ibid.*, p. 13.

tion with systematic instructional activities. As was noted at the Conference this implies not only teaching and scholarship but also all other forms of instruction.[1] The formalities to be complied with in such cases are analogous to those required to obtain licenses for translation (a preliminary request addressed to the copyright owner, sending an application to the information centre, payment and transmittal of compensation, etc.).

The name of the author and the original title of his work should be indicated on all copies of a reproduction. A license does not extend to the export of copies and is valid only for publication in the territory of the country in which it has been applied for. A compulsory license to reproduce a specified edition of a work may be granted only if copies of that edition have not been distributed in the developing country concerned to the general public or in connection with systematic instructional activities after the expiration of a definite period since its first publication and at a price reasonably related to that normally charged in the country for comparable works. The length of the period varies with the character of the work, and is five years, as a rule. There are two essential exceptions to this rule: for works of the natural and physical sciences, including mathematics, and of technology, the period is three years.[2] For works of fiction, poetry, drama, music, and art, the period is seven years. A compulsory license for reproduction permits to reproduce in principle only such works that have been published in print or by an analogous process; reproduction of sound recordings is excluded.

During the preparations for the Paris Conferences a wide discussion flared up over the question of audiovisual works, i.e., instructional films and videocassettes used in the teaching process. Delegations of developing countries referred to the steadily growing importance of the use of these works in schools and institutions of higher learning and demanded that the provisions for compulsory licenses should be extended to such works.

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[1] *Bull. du dr. d'aut.*, p. 25.

[2] No license obtainable after three years is granted until a period of six months has elapsed from the date of sending an application to the owner of the right of reproduction.

Other delegations raised objections to such extension.[1]

At the Paris Conferences audio-visual recordings were provided for in paragraph 3 of Article V^quater. In such cases, however, licenses may be granted only in relation to works prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Now we shall discuss the permissibility of making quotations provided for in the Berne Convention. Whereas Article 10 of the Brussels Act permitted in all countries of the Berne Union brief quotations from newspaper articles and juridical collections, even in the form of press summaries, the Stockholm Conference extended this provision to all literary and artistic works and lifted the restriction prescribing brief quotations.

The new text later incorporated into the Paris Act of 1971 provided that it shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries (Article 10.1). At the same time, the new provision for quotations retained the rule concerning mention of the source and the name of the author.

It is indisputable that the new provision, especially as regards compatibility with fair practice, has a measure of uncertainty leaving much at the discretion of the court.

Under the Berne Convention it is a matter for legislation in the countries of the Union, and for special agreements between them, to permit the utilization, "to the extent justified by the informatory purpose", of literary and artistic works for publications of an educational or scientific character or for anthologies.

The Stockholm Conference approved the joint proposal of the socialist countries (Bulgaria, Czechoslovakia, Poland, and Romania) for extending this provision to broadcasts and gramophone recordings. The new text refers to the use of quotations not only in publications

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[1] E. Ulmer. Die Entwürfe für die Revision der Urheberrechtsabkommen. *GRUR, Int.*, 1970, S. 331.

but also in broadcasts and in reproductions by means of fixation of sounds or images.

In addition other changes were made in this provision (paragraph 2 of Article 10). Quotations are now permitted for illustration in teaching (à titre d'illustration de l'enseignement), which is understood for the purposes of this article as instruction at any level (in schools, universities, etc.).[1] The utilization of such quotations should be compatible with fair practice. Mention must be made of the source and the name of the author.

The Berne Convention also contains a provision concerning reproduction in the press and broadcasts of articles published in newspapers or periodicals on current economic, political or religious topics.

The right of public performance. Whereas the right of publication and translation is the fundamental right of the author or another owner of a copyright in a literary work, the right of public performance of their works is of equal importance to dramatists and composers.

Article 11 of the Berne Convention which grants protection to these rights provides that authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing: (a) the public performance of their works, including such public performance by any means or process; (b) any communication to the public of the performance of their works. Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

The concept of "public performance" is not explained in the Berne Convention; however, the inclusion in the Stockholm Act of the words "by any means or process" evidences a trend of expansion of this concept.

The Convention also provides for the exclusive right of the authors of literary works to authorize the public recitation of their works by any means or process (Article 11[ter]).

It is necessary to discuss in greater detail the rules of the Berne Convention concerning mechanical recording (Article 13), as well as the right of diffusion of works by broadcasting.

[1] See about this *Actes de la Conférence de Stockholm...*, Vol. II, pp. 877, 900-901, 916.

The exceptional right of the author to authorize the mechanical recording of his work is a component part of his general right of reproduction of his work. What is more, it extends not only to musical works as was provided for in the Brussels Act but also to all works that can be recorded mechanically.

At the same time, the Convention refers to the possibility of granting compulsory licenses in this field. Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words, the recording of which together with the musical work has already been authorized by the latter.[1] All such reservations and conditions, however, shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority (Article 13).

Recordings imported without permission from the parties concerned into a country where they are treated as infringing recordings shall be liable to seizure.

The above-mentioned provisions of the Berne Convention protect, above all, the interests of the manufacturers of gramophone recordings, phonograms, and tape recordings of musical compositions.

The Universal Convention of 1952 contains no provisions concerning these questions.

The problems of copyright in broadcasting by radio and TV. The problems of copyright which arose with the development of broadcasting and other technical facilities of communication of signals gave rise to corresponding provisions in international conventions. The question of wireless diffusion of works was first embodied in the 1928 Rome Act of the Berne Convention. The Brussels Conference of 1948 adopted new, more detailed regulations to this effect.

The Convention provides in the first place that authors of literary and artistic works shall enjoy the exclusive right of authorizing the broadcasting of their works or

[1] Hence no compulsory license may be granted with respect to literary works.

the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images. This implies radio and television broadcasting.

Second, there is a provision for the same exclusive right to authorize any communication to the public by wire or by rebroadcasting when this communication is made by an "organization other than the original one". Thus, a special permission of the author is required for broadcasting, and of the broadcasting or television company which has made the original broadcast for rebroadcasting or any other further communication of a work to the public.

Third, the author enjoys the exclusive right of authorizing "the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work" (Article 11bis).

It follows from these provisions of the Berne Convention that any communication of a work to the public, including wireless and TV broadcasting from theatres and concert halls, telecasting of films in the countries of the Union is illegal without a license from the owner of the copyright. This naturally involves the payment of equitable remuneration.

It should be noted that the Berne Convention refers to communication to the public of all literary and artistic works by wireless, TV or any other means or process but provides for no restrictions with respect, for instance, to works of painting or sculpture.

At the same time, it is a matter for legislation in the countries of the Union to determine the conditions under which these rights may be exercised in the field of radio and TV broadcasting.

The retroactive effect of conventions. The question of the retroactivity of conventions, i.e., of whether protection extends to a work in which a copyright had been granted before a convention came into effect, is of certain practical importance to any state joining the convention. This question is differently decided in the Berne and the Universal Convention.

According to Article 18 of the Berne Convention, it shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the

term of protection. If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew. It is provided that the application of this principle will be subject to any provisions contained in special conventions between countries of the Union, and in the absence of such provisions the respective countries will determine the conditions of application of this principle.

Thus, the Berne Convention explicitly provides for the retroactive effect of the Convention, limiting it to the duration of copyright. For instance, if state "A", in which the duration of copyright after the author's death is twenty years, joins the Convention, state "B", where a term of fifty years is granted, must protect a work published fifteen years after the author's death. And also, a work by an author of country "B" will not be protected in country "A" if it is published there 25 years after his death.

The Universal Convention contains a different provision on this question. Its Article VII reads: "This Convention shall not apply to works or rights in works which, at the effective date of the Convention in a Contracting State where protection is claimed, are permanently in the public domain in the said Contracting State." Thus, in contrast to the Berne Convention, the Universal Convention proceeds from the assumption that the Convention has no retroactive force in principle. In such cases the starting point is the existence of protection in the country where protection is claimed rather than in the country of origin of the work. The situation precisely in a given country is of decisive importance, and the situation in copyright protection in another country is quite irrelevant. The date referred to in respect of protection in the country where protection is claimed is the date the Convention comes into force in respect of a newly acceding state, i.e., three months after that State has deposited its instrument of accession.[1]

[1] For greater detail see A. Bogsch. *Op. cit.*, pp. 81-84; G. D. Cary. The United States and Universal Copyright Convention: An Analysis of Public Law 743. In: T. R. Kupferman, M. Foner. *Op. cit.*, pp. 96-100; W. Goldbaum. *Op. cit.*, S. 73-75.

Thus, if state "A" joins the Universal Convention protection granted in that state to the rights of authors of state "B" already bound by the Convention will not be extended to rights which did not exist in that state before the date of accession. As was pointed out in commentaries to the Universal Convention this article deals only with works which already existed at that time. In relations between state "A" and states in which authors of state "A" enjoyed no protection, the Convention will be effective only for works published after it comes into force for state "A". In the case of republication the date of first publication is of decisive importance. If a work was first published before the date of the Convention becoming effective for a given state and the second edition appeared after that date, this work will not be protected.[1]

The reason for which a work was denied protection is irrelevant. For example, the right of translation may be "in the public domain" (using the terminology of the English text of the Universal Convention) before the critical date, since it was not recognized by the law of the country, i.e., the principle of freedom of translation was in effect.[2] A work may be in the "public domain" as a result of the expiry of the term of protection or non-compliance with formalities. Thus, although this rule is formulated differently in the French, Spanish and English texts, its essence is the same: the Universal Convention has no retroactive force and protects only new works published after the date on which it takes effect in a given state.

With reference to the USSR this means the following: by virtue of the territorial character of copyright a work of a national of a country party to the Convention might formerly be freely translated and otherwise used in the USSR. No protection was accorded to such works until May 27, 1973 when the Convention came into force in the USSR. In accordance with the provisions of the Conven-

[1] Protection will be given only to new material in the case of a supplemented edition.

[2] In his commentaries to the Convention A. Bogsch notes that this is particularly clear in the Spanish and French texts of the Convention which, instead of speaking of works (or rights) "in the public domain", speak of works (or rights) "which have definitely ceased to be protected or which have never been protected" (A. Bogsch. *Op. cit.*, p. 83).

tion protection in the USSR is accorded only to new works of nationals of the countries party to the Convention published abroad after the aforementioned date. And conversely, in other countries party to the Convention protection can also be claimed for works first published in the USSR after May 27, 1973.

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The above-given comparative analysis of the contents of the Berne and the Universal Convention permits the following conclusions to be made.

The Universal Convention is of a more universal character and more applicable to countries with different social and economic systems, with different systems of copyright law. This is manifest primarily in that it contains a small number of material law norms and affects the domestic legislation of the Contracting States to a lesser extent than the Berne Convention. The Universal Convention does not directly regulate in particular the questions of using works in radio and TV broadcasts and the questions of copyright in cinematography. The Universal Convention abides more consistently than the Berne Convention by the principle of national régime, without permitting material reciprocity.

The Universal Convention provides for a shorter term of protection of copyright after the author's death, which is of no small importance, for instance, in the payment of royalties for corresponding editions of literary works.

The Universal Convention is more representative than the Berne Convention as regards the range of Contracting States: it affiliates countries of Europe and the American continent, including the United States, and a larger number of developing countries.

At the same time, there is a trend towards convergence between the rules of both Conventions, which has been manifest in the inclusion of uniform rules regarding developing countries.

Chapter 4

SOVIET COPYRIGHT LAWS AND INTERNATIONAL ARRANGEMENTS

1. A General Outline of Soviet Copyright Law

The cultural and scientific progress of the Soviet Union is a matter of common knowledge. It is justly considered a great book-publishing nation. Suffice it to recall that 80,000 books in a total printing of more than 1,500 million copies are published in the USSR each year. In 1976, 1,800 million copies of books and pamphlets were put out. The Soviet Union leads the world for the number of cinema-goers. The theatres attract up to 110 million spectators annually.

The construction in the Soviet Union of developed socialist society has enabled the provisions for the rights of Soviet citizens to be considerably widened and deepened in the USSR Constitution of 1977 as compared with the former Constitution.

The Constitution in a special article proclaims the freedom of creation: in accordance with the aims of communist construction, citizens of the USSR are guaranteed freedom of scientific, technical and artistic work. This freedom is ensured by broadening scientific research, encouraging invention and innovation, and developing literature and the arts (Article 47).

The state creates the material preconditions required for this and supports voluntary societies and professional unions.

It should be specially emphasized that the USSR Constitution directly provides that "the rights of authors, inventors and innovators are protected by the state".

Norms of Soviet copyright law are worked out by government institutions in close collaboration with public

organizations affiliating creative workers: the Writers' Union, the Composers' Union, the Artists' Union, etc.[1]

In the USSR the fundamental norms of copyright law are contained in the Fundamentals of Civil Legislation of the USSR and the Union Republics.

This is the national law adopted by the USSR Supreme Soviet on December 8, 1961 which came into force on May 1, 1962. Detailed rules in this field are contained in the civil codes of the Union Republics.

Each of the fifteen Union Republics making up the Soviet Union as a federal state has a civil code adopted by its respective Supreme Soviet. The copyright law is regulated in the civil codes of the Union Republics in much greater detail than in the Fundamentals. For instance, the Civil Code of the Russian Federation (1964) contains 42 articles (Articles 475-516) on copyright. The sections on copyright in the civil codes of the Union Republics differ in certain details which are, incidentally, inessential from the viewpoint of international protection.

In accordance with the Fundamentals of Civil Legislation and the civil codes a large number of statutes on copyright have been enacted: resolutions of the USSR Council of Ministers and the governments of the Union Republics, as well as orders and instructions of Ministries and government departments, particularly those entrusted on a nationwide scale with the management of publishing work, institutions of culture, cinematography, radio and television broadcasting. It should be pointed out that even when a resolution, an order or an instruction is issued by a federal agency no contradiction with the civil codes of the Union Republics is permitted, since the latter are legislative acts.[2]

The norms of Soviet copyright law are called upon to ensure favourable conditions for creating and disseminating in the Soviet Union of highly artistic and ideological works of literature and art, for the continued development of scientific creativity. The Soviet copyright law

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[1] For greater detail see *Professional Unions in the USSR (Organizational Legal Problems)*. Yuridicheskaya Literatura Publishers, 1970, p. 218, et seq. (in Russian).

[2] E. P. Gavrilov, Lettre d'URSS. *Dr. aut.*, 1976, No. 4, pp. 98-114.

expresses the main principles of harmony between the interests of the author and society, remuneration for creative work in accordance with its quantity and quality, broad protection of the personal non-property and property interests of the author.[1] Copyright legislation proceeds from the need to ensure full protection of the author's interests and their harmony with the interests of the whole society in the all-round development of science and technology, literature and the arts. This is expressed in both personal and property rights granted to the author by the law and in the determination of the conditions of using fruits of creative work by the state and society.[2]

Soviet law grants the following rights to the author: the right of publication, reproduction and dissemination of his work by all legal means under his own name, pseudonymously or anonymously; the right of inviolability of a work; the right to a compensation for the use of a work by other persons, excepting cases provided for in the law.

It is forbidden to use a work in any way, translate it into another language, set it to music or to remake a narrative composition into a play, a cinematographic, radio or TV scenario, and vice versa without the consent of the author and his successors in title.

Under Soviet legislation copyright extends to scientific, literary and artistic works irrespective of the form, purpose and merits of a work, as well as the form of its reproduction (Article 475 of the Civil Code of the Russian Federation, and the corresponding articles in the civil codes of other Union Republics).

Copyright in the subjective sense implies the rights directly granted to the creator of a work. They arise by virtue of the creation of this work as such. A work must necessarily exist in some objective form. In contrast to the legislation, say, of the United States and some other countries no formal registration of a work is required.

An exception is made for photographic works: a copyright in such works is recognized if each copy indicates the name of the author, as well as the place and year of

[1] For greater detail see V. I. Serebrovsky. *The Problems of Soviet Copyright Law.*

[2] See O. S. Ioffe. *The Fundamentals of Copyright Law*, p. 8 (in Russian).

publication. Soviet legislation on copyright also takes account of the specific character of concrete types of creative work.[1]

Under Soviet law the author possesses a complex of moral and property rights. The main of them is the right to claim authorship, that is, only the creator of a work is entitled to regard himself as its author.

The author has the right to a name. According to Article 98 of the Fundamentals of Civil Legislation of the USSR and the Union Republics, it is for the author to decide whether to publish a work under his own name, a pseudonym or an anonym.

Under no circumstances may a work created by one author be presented as a work by another author. The inviolability of this work is also guaranteed. Neither the title nor the contents of a work may be altered without the author's consent.

According to Article 98 of the Fundamentals the author has the right of publication, reproduction and dissemination of his work by all legal means. It should be borne in mind at the same time that publishing, theatrical and similar activities are outside the limits of legal competence of Soviet citizens. Publishing houses, theatres, motion picture studios in the USSR are owned by the state (or public organizations) and managed by specially constituted state (or public) organizations.

For example, publishing activity is included in the civil legal competence of corresponding organizations. The author, therefore, exercises his personal rights of publication and dissemination of his work exclusively through publishing and other organizations. To have his work published and distributed he has, as a rule, to enter into contractual relations with these organizations: to conclude a publishing, production, scenario or suchlike contract.

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[1] For greater detail see N. L. Zilberstein. *Copyright in Musical Works.* Sovietsky Kompozitor Publishers, 1960; A. Vaksberg, I. Gringolts. *The Author in Cinematography.* Iskusstvo Publishers, 1961; U. K. Ikhsanov. *The Rights of Authors of Works of Imitative Art.* Yuridicheskaya Literatura Publishers, 1966; V. G. Kamyshev. *The Publishing Contract for Literary Works.* Yuridicheskaya Literatura Publishers, 1969. (All in Russian.)

The author also has certain property rights: he is paid a compensation in accordance with established rates for the use of his literary or artistic work.

The viewpoint prevalent in the Soviet juridical literature is that the author's emoluments in the USSR along with a salary are a form of remuneration for work in accordance with its quantity and quality.[1] The author of a work in the USSR cannot be regarded as a commodity producer. The author himself does not engage in the distribution of his work, since publication, distribution, and public performance are a matter for corresponding organizations. The price of a book is not determined by agreement with the author and does not affect the size of royalties. In the overwhelming majority of cases the rates of remuneration are determined by normative regulations, usually by relevant ordinances of the Councils of Ministers of the Union Republics. At the same time, both the quality and quantity of the author's work embodied in his production are taken into consideration. For instance, in the case of a literary work, its size, the number of copies, and the number of editions are considered; in the case of theatrical works the author is paid a definite percentage of box-office returns from each performance.

A distinctive feature of the Soviet copyright law is government regulation of the rates and the procedure of payment of the author's fees for the use of his work by whatever means. This regulation is usually effected by ordinances of the Council of Ministers of the USSR and the Councils of Ministers of the Union Republics. It should not be presumed, however, that government regulation of the author's remuneration leaves the parties to a contract for the use of a work, the author in particular, no leeway in determining the size of a compensation. This contractual freedom, however, is limited by the rates in force.

[1] This viewpoint was substantiated by B. S. Martynov, B. S. Antimonov and Y. A. Fleishits, I. A. Gringolts, V. G. Kamyshev and other writers. A different view was expressed by V. A. Dozortsev, who maintained that artistic creative activity is a kind of small-commodity production, and the author's compensation is the price charged for the sale of a work. For a well-grounded criticism of this viewpoint see I. A. Gringolts. On the Theory of the Authors' Remuneration. *Transactions of the Research Institute of Soviet Legislation*, Issue 14, Moscow, 1968, pp. 140-155 (in Russian).

Government regulation makes it possible to assure, on the one hand, guarantees of equitable remuneration of the author's work, to create favourable prerequisites for engaging in creative professions, and in the final analysis for developing culture and the arts, including those of formerly backward peoples; on the other hand, it prevents the possibility of excessive enrichment of individual authors, which would be incompatible with the principles and morals of socialist society. Soviet writers and art workers are assured good material conditions for their professional pursuits not only by the payment of author's fees but also by the system of government pensions, as well as benefits and privileges granted by such public organizations as the Literary, Musical and Art Funds.

Thus, the main subject of copyright is, by a general rule, the author who has created a work. In isolated cases directly provided for in the law a copyright may be granted to juristic persons (in scientific collections, encyclopaedias, motion pictures, TV films, radio and TV programmes). Besides, juristic persons may acquire a copyright by contract, i.e., as the author's assigns. In such cases protection of copyright is limited, as a rule, to rights to dispose of a work. The other rights, including the right to the author's remuneration, are vested exclusively in the creator of a work or his heirs. Therefore, a Soviet publishing house which is the author's successor in title with regard to his work has no right to a compensation for the use of that work by other organizations or persons.

A feature of the Soviet copyright law essential in the present study was the institution of the principle of freedom of translation. The Soviet Union is a multinational state and in the period of the cultural revolution the task was to acquaint all the peoples inhabiting the Soviet Union with the achievements of world and Russian culture, to organize a broad exchange of cultural values between these peoples. The freedom of translation was granted by legislation to ease the successful performance of this task. It was decreed that in the Soviet Union a work might be translated without the author's consent and compensation.

This principle was proclaimed as far back as January 30, 1925 in the resolution "On the Fundamentals of Copy

right Law" by the Central Executive Committee and the Council of People's Commissars of the USSR.[1] The Fundamentals recognized the translation of another's work into another language as an independent object of copyright, which was later reaffirmed in the Fundamentals of Copyright Law of 1928.[2]

The Fundamentals of 1928 proceeded completely from the principle of freedom of translation. According to paragraph "a" of Article 9, "the translation of another's work into another language" was not considered as an infringement of copyright.[3] As was pointed out in the foregoing, this principle was consistently implemented in Soviet legislation to assure the cultural advancement of the socialist nations inhabiting the Soviet Union and interested in an exchange of cultural values without any restrictions whatsoever.[4]

Article 102 of the Fundamentals of Civil Legislation of the USSR and the Union Republics (1961) provided that any published work could be translated without the author's consent into another language but with his notification on condition that the integrity and contents of the work were preserved. For example, if a work originally published in Russian was translated into Lithuanian, Georgian, Armenian or other languages, that work could not be distorted, but the author's consent was not required for the publication of his work in the language of a Union Republic or another national language. The legislation of all Union Republics established a rate of 60 per cent of the royalties to be paid for translation of works of fiction from one language of the USSR into another, Russian included. The same rule was enacted (except in four republics) with respect to translations from Russian into another language of the USSR.[5] In the case of a public

[1] *SZ SSSR*. 1925, No. 7, Item 67.

[2] *Ibid.*, 1928, No. 27, Item 246.

[3] The proposals for instituting an exclusive right of translation put forward by some writers were not accepted. See I. Y. Kheifets. *Copyright Law*, Moscow, 1931, p. 91 (in Russian).

[4] For greater detail see M. V. Gordon. *Soviet Copyright Law*. Gosyurizdat Publishers, 1955, p. 92, et seq; V. G. Kamyshev. *Op. cit.*, p. 62, et seq; G. A. Kudryavtseva. The Principle of Freedom of Translation in Soviet Copyright Law. *Vestnik MGU*, Series XII, "Law", 1970, No. 1, pp. 51-58. (All in Russian.)

[5] These rules are laid down by ordinances of the governments of the Union Republics.

performance of a translated work compensation was paid according to rates approved by the governments of republics.

Speaking of the right of translation, however, it should be noted that the provisions of Soviet law concerning the questions of translation tended to change, although the principle of freedom of translation itself was retained.[1]

In the postwar years the legislation of the Union Republics made provision for the payment of royalties to authors of works translated and published in another language. Article 102 of the Fundamentals provided that the right to remuneration for the use of a work translated into another language belong ed to the author of the original in cases specified in the legislation of the Union Republics.

Another difference between Article 102 of the Fundamentals of 1961 from the former legislation (Article 9 of the Fundamentals of 1928) consisted in a provision for notifying the author of the translation of his work, as well as a requirement for preserving the integrity and contents of the work, which had not been stipulated before.[2] What is more, the civil codes of the Union Republics provide that the author may require a translation for inspection.

Another distinction of Soviet law concerning the right of reproduction should also be pointed out. In certain cases reproduction of published works is permitted without the author's consent and compensation. This applies in the first place to radio and TV broadcasts of publicly performed works from the place of performance. For example, any spectacle or concert may be broadcast over

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[1] For greater detail see G. A. Kudryavtseva. *Op. cit.*, pp. 51-58.

[2] Various proposals for revising this legislation to provide for guarantees to the author with respect to his right to integrity of his work were put forward by Y. A. Fleishits, V. I. Serebrovsky, M. V. Gordon, Z. G. Krylova, and some other authors (M. V. Gordon. The Right of Translation. *Transactions of the Kharkov Institute of Law*, 1940, Issue 11, p. 27; Z. G. Krylova. The Protection of the Personal Rights of the Author of the Original Work and the Translator in Civil Law. *Vestnik MGU*, Economics, Philosophy and Law series, 1958, No. 1, pp. 100-102; V. I. Serebrovsky. *The Problems of Soviet Copyright Law*; Y. A. Fleishits. *Personal Rights in Civil Law of the USSR and the Capitalist Countries.* Yurizdat Publishers, 1941, p. 196). (All in Russian.)

the radio without notifying the author or payment of royalties. What is more, any published work may be recorded in film, a gramophone record, or magnetic tape for public reproduction without the author's consent but subject to obligatory payment of royalties. If the recordings made are used in motion pictures or broadcast by radio or television no compensation is paid. All these rules were established for the purpose of wider development of culture.

A general outline of Soviet copyright law would be incomplete without mention of the role played in this field by Soviet organizations specially set up to protect copyright.[1] Until 1973 there were two such organizations: the USSR Administration for Copyright Protection (VUOAP) under the USSR Writers' Union and a similar department under the USSR Artists' Union. VUOAP also exercised protection of the rights of composers in accordance with a special arrangement between the Writers' and the Composers' Unions.

In 1973 the USSR Copyright Agency (VAAP) was established on the basis of these organizations.[2]

Among its sponsors are all professional unions (of writers, composers, artists, journalists, cinematographers, architects), the USSR Academy of Sciences, the All-Union Central Council of Trade Unions, the Novosti (News) Press Agency, as well as government institutions, such as the State Committee of the USSR Council of Ministers for Publishing, Printing and Book Trade, the USSR Council of Ministers State Committee for Science and Technology, the State Television and Radio Committee of the USSR Council of Ministers, the State Committee of the USSR Council of Ministers for Cinematog-

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[1] For greater detail see *Professional Unions in the USSR (Organizational and Legal Problems)*, Chapter IV (authors V. L. Chertkov and S. A. Chernysheva), pp. 219-252, 232-233; *Copyright Protection in the USSR. For the Centenary of Copyright Protection Service.* Yuridicheskaya Literatura Publishers, 1974. (All in Russian.)

[2] For the VAAP Statute in French see *Vneshnyaya Torgovlya* (Foreign Trade), 1975, No. 1, pp. 58-60; there is also a separate edition. About the organization and activities of VAAP see J. S. Roudakov, I. A. Gringolts. L'Agence de l'URSS pour les droits d'auteurs (VAAP). *RIDA*, 1974, No. 1, pp. 2-33; E. Gavrilov. Etude générale; organisation du service de protection du droit d'auteur en URSS. *Bull. du dr. d'aut.*, 1974, No. 2/3, pp. 26-31.

raphy, the USSR Ministry of Culture, and the USSR Ministry of Foreign Trade.

The composition of sponsors attests to the prestigious and inter-departmental character of this new organization. A conference of sponsors of the Agency held in Moscow on September 20, 1973 elected the Council of Sponsors and approved the Statute of the Agency. According to the Statute the highest governing body of the Copyright Agency of the USSR is the Conference of Sponsors of the Agency. It is convened at least once every five years. The Conference elects the Council of Sponsors, reviews its reports, endorses and amends the Statute of the Agency. The Council of Sponsors meets at least once a year. It elects the Board of the Agency, the Chairman of the Board, and the Auditing Commission. The Board of VAAP directs the day-to-day activities of the Agency.

The Agency may set up its branch offices in the Union Republics and groups of regions. It has its representatives in autonomous republics, territories, regions, and large cities of the country.

The Statute of the Agency provides that the Copyright Agency of the USSR (VAAP) is a non-governmental organization operating in accordance with the USSR Constitution for the following purposes:

to ensure the protection of the rights of Soviet and foreign authors and their successors in title in scientific, literary and artistic works when these are used in the territory of the USSR, and the rights of Soviet authors and their successors in title in their works when these are used abroad;

to help create the most favourable legal, moral and material conditions for scientists, writers and artists to engage in fruitful work;

to promote international co-operation in the cultural and scientific fields;

to promote in every way the acquaintance of people in other countries with the best works of Soviet literature, science and art, and to promote the exchange of cultural values between nations.

VAAP is a juristic person: it has fixed and circulating assets and may, in its own name, acquire rights and discharge responsibilities, enter into transactions and agreements pursuant to its functions and act as complai-

nant and defendant in courts of law and in courts of arbitration.

The Agency may open current and other accounts with the State Bank of the USSR, the USSR Bank for Foreign Trade and other banks; it may receive credit and conduct other economic activities necessary for the discharge of its functions.

The Soviet State and its organs and organizations bear no responsibility either for the activity of the Agency or for its commitments. The Agency is not responsible for the commitments of the Soviet State, its organs and organizations.

What are the main functions of VAAP?

Among them is protection of the rights and legitimate interests of Soviet and foreign authors and their successors in title in the case of using literary, scientific and artistic works in the USSR, Soviet authors and their successors in title in the case of using works abroad; representation of the author's rights and related legitimate interests of authors and their successors in title and the implementation of such measures as are necessary to prevent infringement of copyright and afford restitution.

VAAP is entitled to conclude corresponding contracts with foreign organizations and firms, which will be discussed in greater detail in Chapters 5 and 6. VAAP performs a number of functions in collecting and paying royalties due to Soviet and foreign authors and their successors in title. VAAP examines Soviet practice in the field of enforcement of copyright and draws up proposals for its improvement. Within its terms of reference the Agency may give obligatory explanations on matters of copyright in compliance with Soviet legislation.

2. The Universal Copyright Convention and the Soviet Copyright Law

The fundamental distinctions of the Soviet copyright law retain their importance also in the conditions of the Soviet Union's participation in the Universal Copyright Convention. This is attributable to the fact that the Convention does not purport as a rule to introduce any uniform provisions of copyright law in the Contracting

States. The preamble of the Universal Convention refers to a system of copyright protection appropriate to all nations. This means that each state may retain the distinctive features of its copyright protection unless they contradict the provisions of the Convention. The Convention proceeds from the principle of national treatment whereby the provisions of domestic legislation in effect in each country apply to works protected by the Convention.

At the same time, the Soviet Union's accession to the Convention has motivated certain amendments in the Soviet copyright law.[1]

According to Article X of the Convention, "each State party to this Convention undertakes to adopt, in accordance with its Constitution, such measures as are necessary to ensure the application of this Convention". It is understood, however, that "at the time an instrument of ratification, acceptance or accession is deposited on behalf of any State, such State must be in a position under its domestic law to give effect to the terms of this Convention". It follows that, first, if the national legislation on questions directly regulated by the Convention contains provisions discordant with its rules, they must be brought into conformity with the latter and, second, each state must accord corresponding protection under its national legislation to works of foreign nationals protected under this Convention.

The amendments and additions in the Soviet copyright law apply to all authors, both Soviet and foreign (if the provisions of Soviet law apply to the latter on the strength

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[1] M. M. Boguslavsky. New Provisions in Soviet Copyright Law. *Sovietskoye Gosudarstvo i Pravo* (Soviet State and Law), 1973, No. 7, pp. 58-60; E. P. Gavrilov. Soviet Copyright Law at the Present Stage. *Pravovedeniye* (Jurisprudence), 1974, No. 4, pp. 67-74; V. Kharuto. The USSR as a Party to the Universal Copyright Convention. *Sovietskaya Yustitsia* (Soviet Justice), 1974, No. 14, pp. 15-17; I. A. Gringolts' Report on Soviet Copyright Legislation at the Meeting of the Law Commission of CISAC in November 1973 (I. A. Gringolts. La législation soviétique sur le droit d'auteur (en relation avec l'adhésion de l'URSS à la Convention universelle sur le droit d'auteur de 1952). *Interauteurs*, 1973, No. 184, pp. 16-43); U. K. Ikhsanov. Soviet Copyright Law and International Agreements. *Juridical Sciences* (Kazakh University), Alma-Ata, 1974, Issue 4, pp. 155-163; M. M. Boguslavsky, E. P. Gavrilov. Copyright: Amendments and Further Development. *Sovietskoye Gosudarstvo i Pravo*, 1975, No. 6, pp. 22-30. (All in Russian.)

of the principle of national treatment). The reason is that no two different systems of protection can be established in domestic legislation: for instance, preservation of the freedom of translation for works of Soviet authors first published in the language of one republic and translated into another language and the institution in the USSR of a system of licenses for translation in the USSR of works first published in countries party to the Universal Convention.

In compliance with Article X of the Convention and the established practice of accession of other states, before making a declaration of accession the Presidium of the USSR Supreme Soviet on February 21, 1973 issued a decree "On Amendments and Additions to the Fundamentals of Civil Legislation of the USSR and the Union Republics".[1] The Presidiums of the Supreme Soviets of the Union Republics were instructed to bring their legislation into conformity with the Decree. This implied in the first place the introduction of amendments and additions into the civil codes of all Union Republics. Such amendments and additions were made in the Civil Code of the Russian Federation by the Decree of the Presidium of the Supreme Soviet of the Russian Federation of March 1, 1974.[2] Regulations were adopted concerning the payment of royalties to Soviet and foreign authors and other questions. In view of the Soviet Union's accession to the Universal Copyright Convention the USSR Council of Ministers passed an ordinance "On the Copyright Agency of the USSR".

The most important revision in the Soviet copyright law affected the right of translation. This revision, however, should not be interpreted exclusively as a consequence of the Soviet Union's accession to the Universal Convention. It had been prepared by the entire history of the cultural advancement of Soviet nations. The principle of freedom of translation had had a great part to play in organizing the broad exchange of cultural values between the peoples of the USSR, in the scientific and cultural progress of formerly backward peoples, and primarily

[1] *Vedomosti Verkhovnogo Sovieta SSSR* (Bullenin of the USSR Supreme Soviet), 1973, No. 9, Item 138. (in Russian).

[2] *Vedomosti Verkhovnogo Sovieta RSFSR* (Bulletin of the Supreme Soviet of the Russian Federation), 1974, No. 10, Item 286.)

in acquainting them with the achievements of Russian literature and art. Today, in the conditions of general advancement of socialist culture achieved during Soviet years, this process has become reciprocal. It is no longer necessary to apply a special, privileged treatment to translations into the languages of the Union Republics, to use works without payment of royalties or concluding contracts with their authors.

Culture national in content and socialist in form has struck firm root and reached a flowering stage in every Soviet republic. Whereas in 1913, 37,000 copies of books were published in Byelorussian, the figure for 1972 was over 10 million, and in the Kazakh language the respective figures were 161,000 and over 13 million. Soviet publishing houses bring out publications in 89 languages of the peoples of the USSR, including 43 peoples and ethnic groups which had no alphabet of their own before the Revolution. During Soviet years the printings of books in Russian have grown almost 13 times, and those in other languages of the USSR, 53 times.

There has been a levelling up and a general rise in the cultural standards of all Soviet nations. In these new historical conditions of mutual enrichment of the literatures of Soviet nations the preservation of the principle of freedom of translation as a definite exemption from the author's rights was no longer necessary.

The rules of translation were revised by the Decree of the Presidium of the USSR Supreme Soviet of February 21, 1973. In accordance with it, paragraph 1 of Article 102 of the Fundamentals was formulated as follows: "Translation of a work into another language for the purpose of publication shall be subject to the consent of the author or his successors in title." Simultaneously, by way of supplementing Article 101 of the Fundamentals it was provided that the use of the author's work (including translation into another language) by other persons is permitted exclusively on the basis of a contract with the author or his successors in title excepting cases provided for in the law.

Thereby the principle of freedom of translation applied formerly was renounced. These revisions were the logical consummation of the above-discussed trends in the development of Soviet domestic legislation determined by

the successes of Soviet socialist culture. At the same time, this was a measure necessary to create the conditions for Soviet participation in the Universal Copyright Convention.

The above-mentioned revisions have widened the authors' rights in general. They have been placed on an equal legal footing regardless of the language they write in.

Thus, the revisions introduced by the Decree into the Fundamentals provide for the need to obtain the author's consent to translation and for the extension to such cases of the general rule concerning the use of a work exclusively on the basis of a contract concluded with the author or his successor in title.

Now the author of the original is entitled to a compensation for the use of his work in translation into another language in all cases unless otherwise provided in the law.

At the same time, in accordance with Article 102 of the Fundamentals the translator retains his copyright in the translation. A translation is an independent object of copyright (Article 490 of the Civil Code of the Russian Federation). Both rights—in the original and in the translation—exist independently. Thus, one should differentiate between the right of translation (which belongs to the author or his successor in title) and the right of the translator in the translation he has performed.

Article 490 (Part 2) of the Civil Code of the Russian Federation of 1964 provided that the right of the translator shall not prevent other persons from translating the same work independently. This provision proceeded from the assumption that since the translator enjoys no copyright in the work translated, while the author himself was not granted the right of translation, any other person was entitled to translate this work anew. A new, independent translation was permitted even with the existence of the so-called "author's translation" made by the author himself. Now Part 2 of Article 490 became pointless and was abrogated, since the transfer of the right of translation was made dependent on the consent of the author or his successor in title.

At the same time, Article 102 of the Fundamentals has incorporated a provision (paragraph 2) which permits in specified cases the translation of a work into another language without the author's consent. In conformity

with this provision "competent authorities in the USSR may, by a procedure established by legislation of the USSR authorize the translation of a work into another language and its publication in compliance in relevant cases with the provisions of international treaties or international agreements to which the USSR is a party". This provision has been included in Article 489 of the Civil Code of the Russian Federation.

How is one to interpret this provision?

It envisages the possibility of institution in the USSR of compulsory licenses provided for in Article V of the Universal Convention (see Chapter 2 of this book). A few states party to the Convention have taken advantage of this provision. The Soviet Union has also reserved the right to introduce such licenses. The conditions on which a license is granted are limited by the restrictions provided for in Article V of the Convention (they may be granted only after the expiration of a period of seven years from the date of the first publication of a work, the author must be paid a compensation, etc.). Which authorities will be entitled to grant compulsory licenses in the USSR will be determined later. It will be recalled that it will not be practically possible to grant such licenses in the USSR until after 1980.

The new provisions of Soviet legislation on the questions of translation are applied to all works of Soviet authors translated from one language into another with regard to legal relationships established since June 1, 1973. With regard to contractual and other legal relationships established before June 1, 1973 these rules are applied to those rights and liabilities which arose after June 1, 1973. As regards the translation of works of foreign authors protected in the USSR, the above-mentioned system should apply only to those works which were first published abroad after May 27, 1973.

Another essential revision in the Soviet copyright law introduced by the Decree of February 21, 1973 refers to an extension of the duration of copyright. It was laid down that a copyright shall be effective during the author's life and 25 years after his death, counting from January 1 of the year following that of the author's death (Article 105 of the Fundamentals). Formerly the term of protection was 15 years as provided by Article 15

of the Fundamentals of Copyright Law of 1928 and the civil codes of the Union Republics and was computed from January 1 of the year in which the author died.

Thus, the Decree established directly in the Fundamentals of Union legislation a uniform term of protection of copyright for all the Union Republics. It was stipulated at the same time that it was a matter for legislation in the Union Republics to determine shorter terms of protection for copyright (but not less than 10 years) in photographic works and in works of applied art. The new rules concerning the term of protection of copyright do not apply to works for which the term of protection expired before January 1, 1973.

Let us discuss other amendments. Articles 97, 101, and 102 of the Fundamentals contain a new term defining the subject of copyright—"successor in title". In certain cases this term has been substituted for the word "heir". Analogous terms are now also used in other regulations operating in this field. Earlier Soviet legislation defined proprietors of copyright as authors and in appropriate cases referred to persons succeeding to the author's rights after his death, as heirs. Juristic persons (publishing houses and other organizations) were recognized as copyright owners in strictly specified cases when copyrights were granted directly to these persons rather than by way of the transfer of rights by the author (so-called assignation).

The Universal Convention has a different approach to defining possible subjects of copyright. The preamble of the Convention implies authors as such, and Article I refers to authors and other copyright proprietors. In accordance with international practices these may be a publishing house or another organization to which the author during his lifetime ceded his rights of using his work under a contract.

The term "successor in title" used in the new Soviet copyright law means a person to whom the author voluntarily ceded his right by contract or otherwise. Thus, under a contract with a publisher the author may assign to him the right to dispose of his work abroad.

Soviet legislation makes no provision for any compulsory withdrawal of the author's copyright. Even in the case of granting a compulsory license the author retains his

copyright to the extent of restriction of his right of translation.

The provision for a possible issuance of compulsory licenses has been incorporated in Soviet legislation in full compliance with the relevant provision in the Convention. It should be pointed out that various comments in the West, the United States in particular, published in connection with the Soviet Union's accession to the Universal Convention contained quite a few allegations to the effect that the Soviet State became a proprietor of copyright. For example, the American lawyer Alan Schwartz wrote in *The New York Times* on March 10, 1973 that the Decree of February 21, 1973 had made the State a copyright proprietor in both unpublished and published works. It was even alleged that a kind of expropriation or confiscation of copyright had been provided for.

Actually, however, the Decree of February 21, 1973 provided for granting compulsory licenses for translation of writings. As for copyright in unpublished works, this right as before is recognized as belonging to the author since the time of creation of his work, and no revisions were made in Soviet legislation regarding this question.

As far as the right of the State to translation of works is concerned, however, it may truly be subject to change, though of a directly opposite character. Article 502 of the Civil Code of the Russian Federation formerly provided for the possibility of instituting state monopoly (of the Russian Federation) of the right of translation into Russian of a work published in a foreign language in the Russian Federation, in other Union Republics or abroad. Now this part of Article 502 of the Civil Code is expunged.

Let us examine the question of the so-called purchase of copyright. Article 106 of the Fundamentals provides that a copyright in the publication, public performance or other utilization of a work may be compulsorily purchased by the State from the author or his heirs according to a procedure established by the legislation of the Union Republics. The Civil Code of the Russian Federation (Article 501) provides that redemption may be effected by a special ordinance of the Council of Ministers of the Russian Federation in each particular case. Compul-

sory purchase is an emergency measure in case the author or his heirs should exercise the copyright contrary to the interests of society, for instance, by preventing the publication of a work of great social value. A provision of this kind was made as far back as November 26, 1918 by one of the first Soviet decrees on copyright, but it has never been applied to works of authors during their lifetime. Practically purchase was used extremely seldom and only with respect to individual heirs of an author, who had converted the copyright into a source of unearned income. The law does not provide for purchase of a copyright as a whole. The right to claim authorship and the author's name, as well as the right to integrity of a work are not appropriated by the State. After the introduction in 1973 of tax on the incomes of the author's heirs this provision will hardly be applied at all.

A detailed examination of both the rules which have not been revised (Article 106 of the Fundamentals; Article 501 of the Civil Code), and of the additions and amendments connected with the Soviet Union's accession to the Convention indicates that, contrary to A. Schwartz's allegations, no copyright of the State has been instituted in the USSR.

At the same time, the Decree of February 21, 1973 widened the range of persons granted copyright. Copyright in works first published in the Soviet Union or present in its territory in tangible form (a manuscript, a drawing, an image, a film, a magnetic tape recording, etc.) is now granted not only to the author and his heirs regardless of their nationality, as it was established in earlier legislation, but also to other successors in title. These may be both Soviet and foreign nationals or juristic persons.

The Soviet copyright law proceeds from the principle of harmony between personal and public interests and purports as one of its main objectives to facilitate the dissemination of the best achievements of science and culture. Free utilization of works is permitted in cases directly specified by the law in the interests of enlightenment and advancing the cultural standards of the country's population.

These principles underlie Article 103 of the Fundamenals and accordingly Article 492 of the Civil Code of the

Russian Federation (use of a work without the author's consent and without payment of compensation). In view of the Soviet Union's accession to the Convention certain corrections have been made with regard to the use of works without the author's consent and the payment of royalties. In accordance with Soviet legislation, the name of the author whose work has been used and the source of a quotation should necessarily be indicated in these cases too.

Let us examine the most essential cases in this category. First, it is allowed, on the above-mentioned conditions, to reproduce in newspapers public speeches, reports and published literary, scientific and artistic works in the original and in translation (point 5 of Article 103 of the Fundamentals in the formulation of the Decree of February 21, 1973). Second, it is allowed to reproduce in scientific and critical works, educational and political-educational editions separately published scientific, literary and artistic works and excerpts thereof.

Reproduction in the form of quotations may be permitted within the limits justified by the purpose of the edition, and reproduction in a different form, in collections in particular, to the total extent not exceeding one author's sheet from works of one author (see point 2 of Article 492 of the Civil Code of the Russian Federation in the formulation of the Decree of March 1, 1974).

Such "legal reprinting" is permitted only in editions of a specified character, for instance in scientific and critical works (monographs, surveys, articles, reviews, etc.), educational and political-enlightenment editions (textbooks, teaching aids, posters, calendars, etc.).

Third, there is a provision for reproduction of "printed publications for scientific, educational and enlightenment purposes without earning profits" (point 7 of Article 103 of the Fundamentals in the formulation of the Decree of February 21, 1973).

This provision of Soviet law applies in the first place to reproduction (production of Xerox copies, microfilms, etc.) in libraries and information centres at the request of other libraries, scientific and educational institutions. The client compensates only for the work done, and copies are not sold. Reproduction for personal use is also allowed (e.g., copying of articles from scientific journals, separate

pages or sections of monographs). Such copies are not sold either, and payment is made only for the making of copies itself (e.g., in a public library for making a photographic copy of an article from a scientific journal).

This method of using foreign scientific works is not ruled out in the activities of Soviet scientific institutions. Such practices exist in many countries. In some states they are permitted by domestic legislation (in Great Britain, Sweden, Finland, etc.).

The provisions for other cases of legal utilization of works without the author's consent or the payment of royalties have been retained without change. Cases in this category are as follows:

A. The use of a published work of another author to create a new, independent work, except the remaking of a narrative work into a dramatic work or a scenario, and vice versa, as well as a dramatic work into a scenario, and vice versa;

B. Information in the periodic press, motion pictures, over the radio and television about published literary, scientific and artistic works, in particular, in the form of annotations, abstracts, reviews and other documentary-informational forms;

C. Reproduction in motion pictures, radio and television broadcasts of public speeches, reports and published literary, scientific and artistic works. Radio and television broadcasts of a public performance of works direct from the place of performance is also considered reproduction.

It is permissible to include a work in unchanged form in motion pictures, TV films, radio and television programmes.

The right of free reproduction in such cases, however, does not apply either to translation or to remaking of a work for a motion picture, a radio or television broadcast. If a work has not yet been published in a given language a corresponding contract is to be concluded with the copyright proprietor;

D. Reproduction by any means, except mechanical contact duplication, of works of imitative art in places open to free visiting excluding exhibitions and museums.

The above-listed provisions of the Soviet copyright law suggest a number of practical conclusions concerning the use of works of both Soviet and foreign authors in the

periodic press (magazines, newspapers), in radio and television broadcasts, and in motion pictures.

No consent of the author or another owner of copyright is required for reproduction in newspapers of any earlier published works and no compensation has to be paid to them.

A different provision is made for publication in magazines. As a general rule such consent is required and royalties may have to be paid for the publication, say, of a novel, a novelette, or a story.

The content of a reservation of rights made in the periodic publication in which the work was originally published may be essential in such an event. With a reservation allowing reproduction without the consent of the editorial board of the magazine but demanding indication of the source, the payment of compensation may not be required.

In addition to the provision for use free of charge, Soviet legislation contains rules permitting the utilization of a work without the author's consent, i.e., without concluding a contract but with indication of his name and the payment of compensation.

The most important of these cases is public performance of published works (point 1 of Article 104 of he Fundamentals). This refers to the so-called "live" performance of dramatic, musical, dramatico-musical and literary works. The rates of compensation have been established in the legislation of the Union Republics as a percentage of box-office returns. If admission is free the author's compensation is paid as a percentage of the fees paid to the performers. In certain cases of free admission the author is paid no compensation at all (performances in museums, lecture agencies, libraries, educational institutions, etc., performance of recorded music on dance-floors).

As far as so-called "minor" rights are concerned, in the vast majority of Soviet republics the rates of compensation for concerts of "serious" music are 5 per cent of box-office returns, for concerts of "light" music 2-3 per cent of box-office returns, and for musical performances at cafes, restaurants, and on dance-floors 5 per cent of the earnings of performers (of course, without affecting their pay).

All royalties for public performance under both "major" and "minor" rights are collected by VAAP through its branch offices and local representatives. For these and other services the Agency deducts a definite percentage from the sums collected. VAAP also distributes among authors sums collected for the performance of works in concerts and other composite programmes. The system of distribution is analogous in principle to the practices of copyright societies in other countries.

Another case where a compensation is paid while no consent of the owner of copyright is required for the use of his work is the fixation of a published work on a gramophone record, film, magnetic tape or another material carrier which may then be put on sale (point 2 of Article 104 of the Fundamentals). A reservation is made concerning cinematography, radio and television, since recording, for instance, of published music on the sound track of a motion picture or recording for a broadcast come under the operation of the above-mentioned provision for free reproduction without compensation.

Practically, the provision for recording applies to the fixation of concert programmes on gramophone records and magnetic tape and cassettes sold to the public. In the future, with the development of cassette television, it will probably extend to television cassettes.

The rates of royalties for the use of works in phonographic recording on gramophone records, magnetic tape and cassettes have been established by a corresponding ordinance of the USSR Council of Ministers.

Let us examine the amendments in Soviet law concerning inheritance of copyright. They reflect the general orientation of the Decree of February 21, 1973 towards an expansion of copyright and further improvement of its protection. Earlier it was envisaged that it was a matter for legislation in the Union Republics to determine the extent and procedure of inheritance of copyright, it being established that heirs were entitled to remuneration for the use of works in a sum of not over 50 per cent of what would be paid to the author if he were alive. Under the legislation of the Union Republics the compensation for the publication of scientific, educational and similar literature paid to the author's heirs was 20 per cent. Now this legislation indicates only the range of the author's

uninheritable rights. Thus, the restriction of the size of compensation paid to the heirs is no longer in force. Article 496 of the Civil Code of the Russian Federation (in the formulation of the Decree of March 1, 1974) reads in part: "Copyright shall be in effect throughout the author and for 25 years after his death, counting from January 1 of the year following that of the author's death.

"Copyright is inheritable. The author's right to a name and the right to the integrity of a work, however, cannot be inherited.

"After the author's death his name and the integrity of his work are protected under the provisions of Articles 480 and 481 of this Code."

As pointed out in Chapter 3, the provisions of the Universal Convention have no retroactive force. This means that a work first published in a country party to the Convention before May 27, 1973 is not eligible to protection in the USSR. Such is the general rule. Its practical application, however, gives rise to certain questions.

This is, for instance, the question of republication. If the first edition of a work of a foreign author was published abroad before May 27, 1973 and the second edition after that date, it is granted no protection in the USSR. As regards the revised parts of a work, new sections and additions, however, the author may claim compensation for such changes.

The next question refers to protection of forewords, commentaries and other materials of this kind. For example, a collection of medieval French literature is published in the USSR. The collection came off the press in France at the end of 1973. No protection is granted to the works as such, since no copyright has ever existed in them, but there are the copyrights of the compilers, the authors of the foreword and commentaries. These copyrights are protected in the USSR.

What are the provisions for protection of a translated dramatic work (a play)? For instance, a play was written by a foreign author and published abroad in 1950. In the USSR it was produced in translation in 1968 and is still on the repertoire. Is the playwright entitled to a lump-sum compensation and a percentage of box-office returns in compliance with the rules in effect in the USSR? The author has no right to a lump-sum remuneration

since the Convention has no retroactive force. The problem of eligibility to a percentage of box-office returns is more complicated. This is attributable to the fact that with respect to contractual and other legal relationships established before June 1, 1973 the provisions of the Decree apply to those rights and liabilities which arose after June 1, 1973. The right to a percentage of box-office returns is effective in respect of plays performed after this date. It would seem at first glance that these rules might be applied in this case. But work itself should be listed under works enjoying no protection in the USSR, and therefore no right to a percentage of box-office returns will, in our opinion, exist in such an event.

As far as the retroactive force of the Convention is concerned, one should differentiate between the sphere of international law regulation, the provisions of the Convention in the case in question, and domestic regulation, i.e., the provisions of the Decree. In our view, in matters pertaining to translation and publication of works of Soviet authors (from one language of the peoples of the USSR into another or into a foreign language) the provision for retroactive force should not apply.

The question often arises as to the treatment of works, such as articles, stories, essays, written by a Soviet author specially for a Soviet periodical published in a foreign language at its request or books put out by a Soviet publishing house in a foreign language. The provision for retroactive force has no relation to works in this category. They are governed by the rules of Soviet legislation (terms of payment, etc.).

Chapter 5

THE COPYRIGHT OF FOREIGN NATIONALS AND THE PROBLEMS OF USING WORKS OF FOREIGN AUTHORS IN THE USSR

1. The Copyright Status of Foreign Nationals

According to paragraph 1 of Article 97 of the Fundamentals of Civil Legislation, "copyright in works first published in the territory of the USSR, or not published but lokated in the territory of the USSR in any tangible form, shall be declared to lie with the author and his heirs regardless of their citizenship, as well as with other successors in title" (in the formulation of the Decree of February 21, 1973).[1]

Paragraph 2 of Article 97 provides that "copyright shall also be granted to Soviet citizens in works first published or present in tangible form in the territory of a foreign state and equally to their successors in title".[2]

At the same time, according to paragraph 3 of Article 97 of the Fundamentals, "other persons shall be granted protection for works first published or present in any tangible form in the territory of a foreign state in conformity with international treaties or international arrangements to which the USSR is a party".

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[1] This provision is reproduced in Article 477 of the Civil Code of the Russian Federation; Article 479 of the Civil Code of the Armenian Republic; Article 476 (paragraph 1) of the Civil Code of the Azerbaijan Republic; Article 475 (paragraph 1) of the Civil Code of the Byelorussian Republic; Article 481 of the Civil Code of the Estonian Republic; Article 491 of the Civil Code of the Georgian Republic; Article 473 of the Civil Code of the Kazakh Republic; Article 489 of the Civil Code of the Kirghiz Republic; Article 499 of the Civil Code of the Latvian Republic; Article 517 of the Civil Code of the Lithuanian Republic; Article 508 of the Civil Code of the Moldavian Republic; Article 474 of the Civil Code of the Tajik Republic; Article 478 of the Civil Code of the Turkmen Republic; Article 474 (paragraph 1) of the Civil Code of the Ukrainian Republic; Article 521 of the Civil Code of the Uzbek Republic

[2] This provision is reproduced in paragraph 1 of Article 478 of the Civil Code of the Russian Federation and in analogous articles of the civil codes of other Union Republics.

Thus, three provisions are in effect:

1. Foreign authors are granted protection for works first published in Soviet territory;

2. Soviet citizens are granted protection for their works published abroad;

3. Foreign authors are granted protection for works first published abroad in accordance with international arrangements to which the USSR is a party.

Consequently, the starting point of Soviet law on copyright protection of foreign nationals is the principle of territoriality.[1] The application of the principle of territoriality in this field appears perfectly justified. M. V. Gordon noted that "if a foreign author makes the first publication of his work in the USSR he is definitely motivated by a desire to contribute it to the cultural fund of socialist society. Even if a work is not yet published but is present in manuscript or another tangible form in Soviet territory, the Soviet State has every reason to protect the rights of a foreign national in such work. This work will probably be first published in the USSR."[2]

The benefits of copyright protection in the USSR are available to foreign nationals and stateless persons resident in the Soviet Union for a definite period. It should be borne in mind, however, that an author not resident in the USSR may also make the first publication of his work there.

It also follows from the above-mentioned provisions of Soviet law that the publication of a work is the key criterion.[3]

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[1] The significance of the principle of territoriality in these questions was, in our view, justifiably emphasized in compiling the civil codes in the Russian Federation, as well as in the Armenian, Estonian, Georgian, Kazakh, Kirghiz, Latvian, Lithuanian, Moldavian, Tajik, Turkmen, and Uzbek Republics. In the civil codes of these Union Republics the provisions of Article 97 of the Fundamentals are formulated in two independent articles. The title of one of them refers to copyright in works published in Soviet territory, the title of the other, to copyright in works published abroad.

[2] M. V. Gordon. *Soviet Copyright Law*, p. 36.

[3] *A Scientific-Practical Commentary to the Civil Code of the Russian Federation.* Yuridicheskaya Literatura Publishers, 1966, p. 547 in Russian; see also the Decree № 9 of the Plenary Session of the USSR Supreme Court of December 19, 1967 "On the Practice of Court Examination of Disputes Arising out of Copyright Law" (*Copyright Bulletin*, 1978, Vol. XII, No. 2, pp. 36-41).

Publication implies any communication of a work to the public by any means or process (edition, public performance, radio or television broadcasting, etc.). The publication of a book, production of a play, broadcasting over the TV network, demonstration at an exhibition, and construction of a work of architecture constitute publication.

Thus, Soviet legislation takes account in the first place of where a work was first made available to the public, i.e., where it was first published.

In the USSR the copyright in a work is protected regardless of whether it was first published in the USSR in the language in which it was written or in translation. The law makes no provision for a work to be published in the original as an indispensable condition of protection. A work may be written in one language (for instance, in the native language of its foreign author) but first published in Russian in Soviet territory and enjoy protection there.

A work of a foreign author first published in the USSR (in the language of the original or in translation) may later be published abroad. Later publication of a work first published in the USSR will not terminate protection granted to its foreign author in the USSR.

The aforesaid is fully applicable to the public performance of works of foreign authors in the USSR. The following example would be pertinent. In the late fifties the play *Sonnie and Machiwal* by the Indian playwright Gargi in a translation by Y. Smirnov and A. Antokolsky was produced by the "Romen" Gypsy Theatre in Moscow. The play had not been earlier performed or published outside the USSR and had been handed over by the author in manuscript form for translation into Russian. The fact of the first public performance of the play in the USSR furnished the ground for copyright protection for this work in the USSR. If the play had been handed over for production to a Soviet theatre and it had failed to stage it practically before its publication abroad, no protection would have been granted to such work in the USSR.

According to Article 97 of the Fundamentals protection extends also to unpublished works present in Soviet territory in tangible form. If, for example, a work is

present in Soviet territory in manuscript form, the law protects the foreign author's rights in such work. If, however, a work present in manuscript form in the USSR is first published abroad, protection of the rights of the foreign author will terminate.

A work of a foreign author may be present in Soviet territory in any other tangible form (for instance, as a motion picture film or a recording). Any work of a foreign author present in Soviet territory in tangible form is granted protection. This rule emanates from the general provision of the Soviet copyright law to the effect that a work enjoys protection regardless of whether it has been published or not. It should also be borne in mind that the term of protection is computed from the time of creating a work.

A work of a foreign author first published in the USSR may be simultaneously protected in another state. Such a situation is possible by virtue of the differences existing between the concept of first publication under Soviet law and the analogous concept under the domestic legislation of another country or an international convention. For example, a musical work of a national of a country of the Berne Union first performed in the USSR will be governed by paragraph 1 of Article 97 of the Fundamentals, while this work will be protected as unpublished in all countries of the Berne Union, because under the Berne Convention unpublished works of nationals of its member states are afforded protection and performance is not considered as publication.

The above-discussed provisions are fully applicable to the copyrights of stateless persons since Article 97 of the Fundamentals accords protection in such cases not to foreign authors but to authors "regardless of their citizenship". It is understood that these may be not only Soviet citizens but also foreign nationals and stateless persons.[1]

Thus, two régimes are applied in the USSR with regard to works first published abroad:

1. The régime of unprotected works, which include: (a) works granted no protection by the Universal Copy-

[1] Stateless persons are persons who are not Soviet citizens and cannot prove their foreign nationality (Article 9 of the Law on Citizenship of the USSR of 1978).

right Convention of 1952[1]; (b) works first published in a country party to the Universal Convention before it came into force in the USSR;

2. The régime of protected works which include: (a) works first published in a country party to the Universal Convention or by a national of that country after the date on which it came into force in the USSR[2]; (b) works protected by bilateral arrangements for reciprocal protection of copyright concluded by the USSR.

2. The Legal Status of Protected Works of Foreign Authors Published in the USSR

It follows from the provision of Article 97 of the Fundamentals that in the Soviet Union foreign authors are granted protection for works which first appeared in the USSR or are present in Soviet territory in any tangible form on an equal footing with Soviet citizens.[3]

A foreign author is granted the personal and property rights established by Soviet law, which have been briefly described above. In the exercise of these rights the question may arise as to the application of the legislation of the Union Republics, since the rates of royalties, for instance, in the USSR are determined as a rule by the laws of the Republics rather than by federal legislation. It is evident that the content of the copyright of a foreign national should be determined by the legislation of the Union Republic in whose territory the work is used (publication, public performance).

Thus, foreign authors are accorded national treatment with regard to these works. This means that it is a matter for Soviet law to determine the level of protection accorded to a foreign author. Therefore, the extent of protection he enjoys under the law of the country of which he is a

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[1] Works first published in countries outside the Convention by their nationals.

[2] The Convention has been effective in the USSR since May 27, 1973.

[3] See I. S. Peretersky, S. B. Krylov. *International Private Law.* Gosyurizdat Publishers, 1959, p. 151; L. A. Lunts. *International Private Law.* Yurizdat Publishers, 1949, pp. 288-289; V. G. Kamyshev. *Op. cit.*, p. 138 (all in Russian).

national is irrelevant. He is granted the extent of protection provided for in the Soviet copyright law. For example, if Soviet law permits in certain cases the use of a work without the author's consent and without payment of compensation but with obligatory indication of his name (Article 103 of the Fundamentals, Article 492 of the Civil Code of the Russian Federation), this provision shall apply to a work by a foreign author. So it is permitted to reproduce in radio and television broadcasts published literary, scientific and artistic works, it being considered that live transmission by radio and TV of a publicly performed work direct from the place of performance shall also constitute reproduction (Article 492 of the Civil Code of the Russian Federation).

The question of the application of national treatment arises also in connection with the publication of articles of foreign authors in the Soviet press. As is known, a number of Soviet newspapers and magazines request foreign authors to contribute articles for publication in the USSR. They have not yet, as a rule, been published abroad. How is the author to be paid if the rates of remuneration for articles of this kind vary from country to country? Should one apply the rates accepted in the country of which the author is a national or the rates of the country of his residence? For a foreign author these rates are habitual. Soviet legislation, however, in certain cases differs essentially from the legislation, for instance, of the country of residence of the foreign author.

It appears that in this question, too, there is no reason for exemptions from the application of national treatment. Practice has followed this path: remuneration is paid on the basis of the rates accepted in the USSR.

In exactly the same way a foreign author is paid his fees in compliance with the rules effective in the USSR when material was requested by a periodical but was not published for reasons beyond the author's control.

The question of republication of works of foreign authors first published in the USSR is settled similarly. For example, the novel *Meeting at a Far Meridian* by the American author Mitchell Wilson was first published in the Soviet Union. In case of later republication of the novel in the USSR the rules for the payment of royalties established by Soviet legislation were applied.

If a work of a foreign author was first published in the USSR not in print but by some other method (such as first public performance in the USSR), translation of such work in the USSR is not permitted without the author's consent.[1]

Soviet law does not require reciprocity or compliance with any formalities, such as registration of a work, etc., for the payment of royalties to foreign authors.

The principle of national treatment is also applied to the public performance in the USSR of works of foreign authors if they have not been performed or otherwise published abroad earlier. As mentioned above, the "Romen" Gypsy Theatre in Moscow staged the play *Sonnie and Machiwal* by the Indian playwright Gargi. Under the Soviet copyright law an Indian citizen enjoys the same rights as Soviet playwrights to a share of box-office returns from the public performance of his play in Soviet territory, as well as the right to a lump-sum compensation for the right of first production.

Here is another example. The French authoress Elsa Triolet, a co-author of the script for the film *Normandie-Niemen*, who concluded a special contract with the Mosfilm Studios, enjoys the same protection as Soviet authors. Hence her right to remuneration in accordance with the provisions of Soviet law after the film was released.

The term of protection of such works is governed by the provisions of Soviet legislation for the duration of copyright. This means that the term shall be computed during the life of the author and 25 years after his death, commencing from January 1 of the year of the death of the author, rather than from the date of publication, as is provided for in certain countries. As far as inheritance of copyright in such works is concerned, it is recognized in respect of the heirs regardless of their nationality (foreign nationals or stateless persons). The circle of the author's heirs is determined by legislation applied in such cases in accordance with corresponding collision norms.[2]

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[1] For greater detail see V. G. Kamyshev. *Op. cit.*, p. 61.

[2] For greater detail see A. A. Rubanov. *Inheritance in International Private Law*. Nauka Publishers, 1966 (in Russian).

Naturally, the extent of protection accorded to heirs is determined by Soviet law (for instance, the sum of royalties to be paid to the author's heirs). Thus, the heirs of foreign authors and stateless persons enjoy in the USSR the same protection that is granted to heirs of Soviet citizens.

The application of national treatment to the above-discussed category of works also means that the provisions for the transfer of copyright to the state may also apply to them. Article 106 of the Fundamentals permits compulsory purchase by the state of copyright in the publication, public performance or other use of the work from the author or his heirs through a procedure established by the legislation of the Union Republics.[1] However, compulsory purchase of copyright by the state is an emergency measure practically applied quite seldom and exclusively in relation to the rights of the author's heirs. There have been no cases of application of this measure to heirs of foreign authors.

Compulsory purchase of copyright should be differentiated from proclamation of a work property of the state. According to Article 502 of the Civil Code of the Russian Federation a work for which the term of protection has expired may be appropriated into the public domain by decision of the USSR Council of Ministers.

Since the copyrights of foreign nationals and stateless persons are accorded protection in Soviet territory they enjoy the same benefits of judicial relief as Soviet citizens.[2]

3. The Legal Status of Works of Foreign Authors Published Abroad and Protected in the USSR

Let us examine the legal status of works of foreign authors first published abroad, primarily works accorded protec-

[1] See Article 501 of the Civil Code of the Russian Federation and the analogous articles of the civil codes of other Union Republics. About this institution see V. I. Serebrovsky. *The Problems of Soviet Copyright Law*, pp. 92-93; B. S. Antimonov, Y. A. Fleishits. *Copyright Law*. Gosyurizdat Publishers, 1957, pp. 79-80 (both in Russian).

[2] See N. I. Marysheva. *Examination in Courts of Law of Civil Cases Involving Foreign Nationals*. Yuridicheskaya Literatura Publishers, 1970 (in Russian).

tion in the USSR in connection with its accession to the Universal Copyright Convention. According to Article 97 of the Fundamentals protection in the USSR extends to works of foreign authors in the following three categories.

Works first published in countries party to the Universal Convention after it came into force in the USSR, i.e., since May 27, 1973.

Works first published by nationals of countries party to the Universal Convention in other states after it came into force in the USSR.

Works protected under bilateral arrangements for reciprocal protection of copyright concluded by the USSR. On January 1, 1978 the USSR had such arrangements with Bulgaria, Czechoslovakia, the GDR, Hungary, and Poland.

In all other cases a work by a foreign author is not entitled to protection in Soviet territory. The following example is presented for illustration. In accordance with Article 102 of the Fundamentals of Civil Legislation (as formulated by the Decree of February 21, 1973), "translation of a work into another language for the purpose of publication shall be subject to the consent of the author or his successors in title". This provision applies to all works of Soviet authors translated from one language into another in the USSR. With regard to works of foreign authors first published abroad, however, the above provision applies only in those cases where such works are accorded protection under the Universal Convention or bilateral arrangements concluded by the USSR.

Since the concept of publication accepted in Soviet legislation differs from the provisions established for the definition of this concept in international arrangements, great importance attaches to the provision of Article 478 of the Civil Code of the Russian Federation and the analogous articles of the civil codes of other Union Republics to the effect that in matters of granting protection in accordance with international treaties or international arrangements the fact of publication in the territory of a foreign state is determined in compliance with the provisions of a corresponding international treaty or international arrangement.

For protection to be granted in the USSR in accordance with the Universal Convention the fact of publication of a work in the territory of a foreign state is determined in compliance with the provisions of the Convention. "Publication", as used in this Convention, means the reproduction in tangible form and the general distribution to the public of copies of a work from which it can be read or otherwise visually perceived.

Thus, it is necessary to find out in the first place whether the work was first published in a country party to the Convention or whether the author is a national of a country party to the Convention if the work was published in another country.

It should also be established whether the author is alive or dead less than 25 years from January 1 of the year following that of his death.

What protection is granted in appropriate cases to foreign authors in the USSR? What personal and property rights do they enjoy?

Paragraph 3 of Article 97 of the Fundamentals provides that copyright is recognized "in conformity with international treaties or international arrangements to which the USSR is a party". It is noteworthy that formerly Article 97 referred to the recognition of such rights "exclusively on the basis and within the limits of corresponding international agreements concluded by the USSR".

The new formulation of paragraph 3 of Article 97 of the Fundamentals is wider. First, it clearly refers to the existence of not only bilateral arrangements which the USSR may have concluded but also multilateral arrangements to which it may accede. Second, whereas formerly reference was made to the recognition of rights "exclusively on the basis and within the limits of corresponding international agreements", now the above-mentioned provision is formulated more widely. The new provision has been worded with a view, in particular, to the essence and content of the Universal Copyright Convention. As underscored above, the essence of the Convention is the establishment of the principle of national treatment. Its main provision as formulated in Article II is to the effect that protected works of nationals of any Contracting State shall enjoy in each other Contracting State the

same protection as that other State accords to works of its nationals first published in its own territory.

In conformity with the principle of national treatment a foreign author is granted the same personal and property rights as are granted by Soviet law to Soviet authors. It is a matter for Soviet legislation to determine the extent of protection afforded to foreign authors. The extent of protection granted to the author by the law of the country of which he is a national is irrelevant. He will enjoy only the rights provided for in Soviet legislation.

It is against the law to afford foreign authors lesser benefits of protection and in general different conditions of protection than those granted to Soviet citizens. This applies to foreign authors protected in the USSR by virtue of its accession to the Universal Copyright Convention.

Individual exceptions to the rights of authors made in the USSR in the interest of society may apply to foreign authors as well. For example, under Soviet legislation in certain cases specified in the law a work may be used without the author's consent or compensation (Article 103 of the Fundamentals; Article 492 of the Civil Code of the Russian Federation). The provision extends to foreign authors. For instance, a work of a foreign author performed in a concert hall may be freely transmitted in radio and television broadcasts without the payment of any additional compensation to the author or his successor in title.

The use of works of foreign authors (publication, performance) is governed by the same rules that apply to works of Soviet authors. Since a Soviet author may not publish and distribute his work himself, a foreign author is not entitled to do it either (to open a printshop, a book shop, etc.).

For the publication of a work in the USSR a foreign author or his assign may conclude a contract with a competent Soviet organization. Under Soviet law (Article 124 of the Fundamentals) foreign enterprises and organizations may conclude in the USSR business transactions with Soviet foreign trade organizations and other Soviet organizations duly authorized.

In all cases such contracts are concluded through the offices of the Copyright Agency of the USSR (VAAP). In accordance with its Statute the Agency mediates in the

conclusion of contracts with foreign juristic and natural persons for the use of works of foreign authors in the USSR.

The Agency collects and pays royalties due under contracts concluded through the offices of or directly by the Agency for the use of works of foreign authors in the USSR.

For the purpose of using his work in the USSR a foreign author or his successor in title may conclude an author's contract with a relevant organization.

Soviet legislation provides for two main types of an author's contract. First, a cession contract and, second, a license contract for the use of a work.

Under a cession contract the author or his successor in title undertakes to cede or the author undertakes to create and cede within a specified period a work to an organization for use by a means specified in the contract, while the organization undertakes to use or begin to use the work within a period specified in the contract, as well as to pay a compensation to the author or his successor in title unless the law provides otherwise.

A license contract may be concluded with respect to any means of using a work (translation into another language, arrangement, etc.). Under a license contract the author or his successor in title grants an organization the right to use his work, by means of translation into another language or arrangement in particular, within the limits and period specified in the contract, while the organization undertakes to pay compensation for the transfer of the right or for the use of the work in a form specified in the contract unless otherwise provided by the law or agreement between the parties (Article 503 of the Civil Code of the Russian Federation as formulated by the Decree of March 1, 1974). The terms of an author's license contract for granting the right of using a work by means of translation into another language or arrangement into a work in a different genre (in particular, of a narrative into a dramatic work or a scenario, and vice versa) are determined by the parties during its conclusion unless otherwise prescribed by the legislation of the USSR and the Russian Federation (Article 516 of the Civil Code of the Russian Federation in the formulation of March 1, 1974).

The author's cession contracts for the use of a work are as follows:

a contract for publication or republication of an original work (publishing contract);

a contract for public performance of an unpublished work (production contract); a production contract providing for the payment of a lump-sum compensation may be concluded by the author for one and the same work with only one organization;

a contract for the use of an unpublished literary work in a cinematographic or television film (scenario contract), in a radio or television broadcast;

a contract for the creation of a work of imitative art for the purpose of its public exhibition (artistic contract);

a contract for the use of an unpublished work of a decorative applied art in industry;

other cession contracts for the use of literary, scientific and artistic works by any other means.

Standard author's contracts specifying the reciprocal rights and duties of the author and the corporate user of a work are widely common in the USSR. All standard contracts—publishing, production, film scenario, etc.—are valid throughout Soviet territory; they have been drawn up by relevant Ministries and government departments jointly with the professional unions concerned. Standard contracts are based on the general provisions of the civil codes of the Union Republics with regard to all author's contracts but take account of the specific characteristics of individual categories of works and means of their utilization (publication in print, performance, cinematographic production, radio or television broadcasts, etc.).[1]

When concluding a concrete contract the parties may deviate from the standard contract, but terms less favourable for the author than those provided for in the standard contract are recognized as invalid (Article 101 of the Fundamentals of Civil Legislation). Effective

[1] Thus, a publishing contract for literary works and other standard publishing contracts were approved by an ordinance of the Chairman of the State Committee of the USSR Council of Ministers for Publishing, Printing and Book Trade of February 24, 1975 (*Bulleten Normativnykh Aktov Ministerstv i Vedomstv SSSR* (Bulletin of Normative Acts of the Ministries and Government Departments of the USSR), 1975, No. 7, p. 34, et seq.).

legislation provides for the possibility of applying a standard license contract for granting the right of using a work by means of translation into another language.

A contract concluded with a foreign author or his successor in title may provide for the payment of compensation (royalties) according to the rates accepted in the USSR or on some other terms. Settlements involved in the payment of royalties to foreign authors (or their successors in title) for the use of their works in the USSR are effected in the currency of the country of the author's permanent residence (or of the permanent headquarters of his successor in title) or, at the request of the author (or his successor in title), in Soviet currency on condition of its being spent in the USSR.

Thus, royalties may, at the request of the author and by agreement between the parties, be paid in the USSR in roubles or transmitted abroad in accordance with the provisions of Soviet legislation on currency transactions.

The revisions made in the Soviet copyright law regarding the right of translation have led to the adoption of standard forms of a contract for the publication of a translation of a literary work published before and for the publication in the USSR of a translation of a work of a foreign author published before.[1] Let us discuss the main terms of the latter contract.

A contract for the publication in the USSR of a translation of a published work of a foreign author is concluded between a publishing house and the author (or his successor in title) through the offices of VAAP. The standard form of such a contract provides that the copyright owner grants the publishing house through VAAP the right of translation into a specified language or languages, as the case may be, for the publication and distribution of the work in a specified territory. At the same time, the publishing house guarantees the accuracy of translation in exact conformity with the original. The publisher is not entitled without a preliminary written consent of the copyright owner to make in the work any changes, abridgements or additions, to change the author's name or the title of the work. The copyright owner undertakes

[1] M. V. Voronkova. Standard Author's Contracts. *Sovietskaya Yustitsia*, 1975, No. 22, pp. 5-6.

not to grant anybody during the term of effectiveness of the contract the right of publication in a corresponding language of the work submitted to the publisher.

There is a provision for the publisher to pay royalties, the payment being made through VAAP within 30 days after the publication of the work in the currency specified in the contract at the rate of exchange of the State Bank of the USSR on the date of payment. VAAP retains 10 per cent from all sums of royalties as compensation for its mediatory services. Income tax is also deducted from the sums of royalties (after charging 10 per cent commission in favour of VAAP).

In concrete contracts provisions are made for the possibility of translation into other languages and the terms of advance payment.

If for reasons beyond the copyright owner's control the translation is not published within a specified period, the copyright owner may cancel the contract, retaining advance money if such has been paid to him.

The publisher is entitled to assign the rights and duties provided for in the contract wholly or in part to other Soviet organizations, notifying the copyright owner and VAAP.

In a little more than two years since its foundation VAAP mediated under contracts with publishers in the assignation and acquisition of rights for the use of almost 9,000 works of Soviet and foreign authors. The first work of an American author in which the rights were acquired in the USSR for publication in the *Inostrannaya Literatura* (Foreign Literature) magazine in compliance with the provisions of the Universal Convention was the novel *Breakfast of Champions* by Kurt Vonnegut.

It is necessary to discuss the question of public performance of works of foreign authors. The functions of collecting and paying royalties due to Soviet and foreign authors and their successors in title for public performance of their works in Soviet territory have been entrusted to VAAP.

VAAP has concluded agreements on reciprocal representation of interests with copyright organizations in capitalist and developing countries. Such agreements are concluded for protection of "major" and "minor" rights, as well as mechanical reproduction of works.

"Major" rights imply the rights of authors in the case of public performance of plays, ballets and musical comedies. Works of foreign authors are included in the repertoire of Soviet theatres solely on condition of the consent of a foreign author or his successor in title and on the basis of a contract with him. Such contracts are concluded by the Ministry of Culture of the USSR through the offices of VAAP. These contracts provide for the payment of compensation for each performance according to the rates for public performance effective in Soviet territory. VAAP has concluded agreements for reciprocal representation of interests in the field of "major" rights with copyright organizations in France, Belgium, Brazil, Greece, the Netherlands, Argentina, and other countries.

The "minor" rights imply the rights of authors of light music, songs and other works performed in public. The copyright organization of one country collects fees for the performance of such works of authors of another country and transmits them to the copyright organization with which it has concluded an agreement. VAAP has concluded such agreements with copyright organizations in France, Belgium, Britain, the FRG, Portugal, Argentina, Austria, the Netherlands, Italy, Mexico, the USA, Canada, Brazil, Norway, Denmark, Finland, Sweden, Greece, Iceland, Switzerland, Australia, Japan, and other countries.

Agreements have also been concluded for reciprocal representation of interests in the field of "mechanical" rights (recording and mechanical reproduction of recordings, distribution of recordings).

All these agreements have the purpose of reciprocal protection of the rights and interests of authors.

The Agency also undertakes to collect and pay fees due to foreign authors and their successors in title for cinematographic and television films, depending on the number of copies made (with the exception of TV films made in collaboration with foreign organizations and firms), for gramophone recordings and the use of works of imitative art.

The rates of compensation paid to the author for the publication in print, public performance and the use of works of foreign authors by other means are determined by Soviet legislation on the principle of national treatment.

Remuneration of the author for the use in the USSR of works first published in print, performed in public or made available to the public outside Soviet territory after May 27, 1973 is made, for instance, for the publication of works translated into languages of the USSR and for the publication of translations in magazines at the same rates and by the same procedure that are prescribed in the USSR for the payment of compensation for the corresponding use of works of Soviet authors.

For a work published in the USSR in the language of the original or for the publication of a musical work remuneration is paid at the rate and by the procedure prescribed in the USSR for the payment of royalties for republication of corresponding works of Soviet authors.

The rates of compensation for the use in radio and television broadcasts, as well as in motion pictures of translated works formerly unpublished in the language of the translation, for the release of works reproduced on gramophone records, magnetic tape, etc., for the public performance of plays, operas, musical comedies, ballets, etc., for the public performance of literary and musical works in concert and other programmes, for the use of works of imitative art, etc., are assimilated to the rates of remuneration of Soviet authors.

Income tax is collected from the sums of remuneration paid to foreign authors or their successors in title for the use of works in Soviet territory (regardless of the place of payment and the currency in which compensation is paid).

In accordance with the Decree of the Presidium of the USSR Supreme Soviet of September 4, 1973,[1] the tax is levied at the rate and by the procedure prescribed for the assessment of remuneration paid to Soviet authors or their heirs for the use of works in Soviet territory.

The Decree prescribes in principle the same tax rates that are applied to Soviet citizens. An annual income under 1,200 roubles is taxed at a progressive rate of 1.5 to 12 per cent; an income over 1,200 roubles is taxed 13 per cent. If the beneficiary is the author's heir or the latter's successor in title the tax is increased to 60-70 per cent and in certain cases still higher.

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[1] *Vedomosti Verkhovnogo Soviета SSSR*, 1973, No. 37, Item 497.

The same Decree, however, provides for the application of the principle of so-called material reciprocity with respect to the tax levied on a foreign beneficiary.

If in a country where Soviet authors or their heirs are paid remuneration the income tax rate is higher or lower than in the USSR this rate is applied to remuneration paid to a foreign beneficiary for the use of a work in Soviet territory.

This means that practically a foreign copyright owner may estimate his possible income from the use of a work in the USSR from the tax rates applied in his country to the payment and transmittal of compensation to Soviet beneficiaries.

This system of taxation is not new in principle and is applied in some countries. It may ease the conclusion of international agreements for the abolition or restriction of double taxation.

The income tax levied on sums paid to foreign authors or their successors in title may be restricted or abolished on condition of reciprocity by the conclusion of corresponding international agreements or treaties between the USSR and other states. One example of such an agreement is the Convention Between the United States of America and the Union of Soviet Socialist Republics on Matters of Taxation signed in Washington on June 20, 1973. The Convention provides that definite categories of income shall be taxable only in the state where the person concerned is domiciled. These categories refer in particular to compensation for the use or the right of using literary, artistic and scientific works, or for the use of copyrights in such works. A US citizen, for instance, is exempt from double taxation in the USSR where his work has been used and in the USA where he is domiciled. He is required to pay the tax only once: in the USA.

Nationals of countries party to the Universal Convention and nationals of other states who have first published their works in any of the former are thus accorded copyright protection in the USSR on a par with Soviet citizens. It is important to note that they are entitled not only to the exercise of these rights but also to their enforcement. They may seek protection for their rights from a competent Soviet authority, primarily a court of law.

With regard to judicial enforcement of copyright the

Universal Convention in Article III which makes provision for compliance with formalities prescribes that any Contracting State may require that a person seeking judicial relief must comply in the interest of the litigation with procedural requirements, such as that the complainant must appear through domestic counsel or that the complainant must deposit with the court or an administrative office, or both, a copy of the work involved in the litigation.

Failure to comply with such requirements, however, shall not affect the validity of the copyright. None of the requirements listed in Article III of the Convention shall be imposed on a national of another Contracting State if such requirement is not imposed on nationals of the State in which protection is claimed.

The Soviet Union belongs precisely to the states in which such requirements are not imposed. The Soviet courts are open to all foreign nationals seeking judicial relief regardless of whether they are resident in the USSR or elsewhere. In contrast to the laws of some states Soviet legislation on civil procedure makes no provision for a special court tax, which is levied in some countries on a foreign complainant bringing an action with a court of law.

In the USSR there is no rule enjoining the sides involved in a litigation to appear in court through a legal counsel. In the Soviet court both a foreign national and a Soviet citizen may plead his case either through an attorney or personally.

In view of the specific character of civil cases foreign nationals, who are unfamiliar, as a rule, with the details of Soviet civil law and judicial procedure, usually entrust their cases to the Injurcollegia, a college of legal counsels specializing in the management of disputes over property rights of foreign nationals and juristic persons in the USSR. The services of the Injurcollegia are particularly convenient for foreign nationals not resident in the USSR. A foreign author, however, is not obliged to hire a legal attorney and this matter is left at his discretion.

Before going into court a foreign author may always apply to VAAP to seek protection for his copyright in the USSR.

One of the main functions of VAAP is to ensure the protection of the rights and legitimate interests of Soviet and foreign authors, as well as their successors in title in the case of literary, scientific and artistic works being used in the USSR, to represent the legitimate rights and interests of authors and their successors in title and adopt such measures as may be necessary to prevent infringements of copyright and secure restitution.

Copyright cases involving foreign nationals may be of two different types. First, these are lawsuits to claim protection for the author's property and personal rights in the event of infringement of his copyright. If an infringement of copyright has caused damage to the author or his successors in title they are entitled to claim restitution (Article 500 of the Civil Code of the Russian Federation). Soviet legislation also guarantees the author's personal non-property rights, which applies, in particular, to foreign authors of works protected in the USSR. An infringement of the author's personal non-property rights may cause both material and moral harm which cannot be remedied by a monetary compensation. Protection against infringement is secured by restitution, by proscribing infringing actions, as well as by other means provided for in the law. Among such infringements, for instance, is publication of a work (a translation in particular) without the author's consent, distortion of the author's name, infringement of the right to integrity of a work, etc. In such cases the author may seek redress to protect his rights in accordance with Soviet legislation.

For example, under Articles 499 and 500 of the Civil Code of the Russian Federation, an infringement of copyright entitles the author to claim restitution, including an injunction against publication or distribution of a work, unless a corresponding right has been legally acquired under a contract. Besides, regardless of such claims, the author may seek compensation for the damage caused by the infringement, including both the direct loss and missed profit.

Disputes of the second type arise from the performance of a license or another contract concluded by a foreign author or his successor in title with a competent Soviet organization. A contract usually stipulates that disputes

of this kind should be settled by arbitration. In such an event it will not be referred to a court of law but will be examined by a court of arbitration in conformity with the provision of the contract. The contracting parties may agree to refer their disputes to the Foreign Trade Arbitration Commission under the USSR Chamber of Commerce and Industry or to a court of arbitration in the country of the defendant. They may also provide for a judicial settlement of disputes should they fail to resolve them by direct negotiations.

If a dispute is liable to a judicial examination it comes under the jurisdiction of the court at the place of residence of the defendant, as a general rule.

In a contract for the use of a work of a foreign author in the USSR the application of Soviet law is justified by its being the law of the country where the publisher, the performing or other organization using the work has its headquarters.

If no such provision is made, however, and a dispute is to be referred to a Soviet court of law or arbitration, the parties concluding a contract in the USSR apply Soviet law as the law of the country where the contract is made (in accordance with Article 126 of the Fundamentals of Civil Legislation).

4. The Problems Involved in the Use of Unprotected Works of Foreign Authors

In the present Section we consider the question of works of authors of those states which do not come under the protection of international agreements to which the Soviet Union is a party. In the absence of an agreement such works of foreign authors are not granted legal protection in the USSR. This rule existed even before the adoption of the Fundamentals of Civil Legislation, when the law accorded no protection to works published abroad by authors who were not nationals of states with which the USSR had corresponding agreements. In compiling the Fundamentals of Copyright Law of 1925 proposals were made for applying the "principle of reciproc-

ity" to protection of the copyright of foreign nationals. These proposals, however, were declined.

In the revision of the law of 1925 and the adoption of the Fundamentals of Copyright Law of 1928 this provision was completely preserved, although it was again proposed that it should be revised.[1] Article 2 of the Fundamentals of 1928 stipulated that a work published abroad or present there in any tangible form is accorded protection only in the case of a special agreement between the USSR and a corresponding state and solely within the limits established by such agreement. As underscored in the foregoing, this rule is valid to this day. It logically follows from it that in the absence of international agreements works of foreign authors are not accorded protection.

With respect to musical compositions no protection is granted by virtue of this basic principle to works of foreign composers first published (printed or performed) outside the USSR.[2]

In the absence of an international arrangement no protection is accorded to the author concerned, and consequently he has no right to claim copyright, or, more exactly, to claim any protection in Soviet territory for his work used in the USSR.

This does not mean, however, that the personal rights of foreign authors are not protected in the USSR. As a matter of practice protection is accorded to the author's name and the integrity of his work. In the case of translator S. versus Gostekhizdat (Technical Literature Publishers) the court found against the plaintiff because his translation of a work of a foreign author might not have been brought out by the publishers as it had been completely remade by Soviet authors and supplemented with certain original materials. There have been other cases in which literary and dramatic works were actually protected in the USSR in the context of the personal rights of their foreign authors regardless of the Soviet Union's non-participation in international arrangements.

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[1] S. I. Rayevich. *The Exclusive Rights.* Leningrad, 1926, pp. 123-124 (in Russian.)

[2] N. L. Zilberstein. *Op. cit.*, p. 30.

It is important to emphasize the fact that denial to a foreign author of protection in Soviet territory does not imply the possibility for any person to appropriate and misuse his work. Under Soviet law misappropriation of authorship (plagiarism) is illegal, and the concept of plagiarism includes the publication of a work of a foreign author under the offender's name. For example, Article 141 of the Criminal Code of the Russian Federation provides for penal punishment for the "publication by the offender under his name of another person's scientific, literary, musical or artistic work or any other misappropriation of authorship in such work".

An analysis of the practices in the publication of foreign authors in the USSR shows that the name (or pseudonym) of the foreign author always appears on a publication. The author's name, the title of the work, as well as the place of publication, the name of the foreign publishers in the language of the original are usually printed on the reverse side of the title page of a published monograph or pamphlet of a foreign author.

The integrity of the work and its literary style are dependent, above all, on the careful selection of translators. The high professional standard of translation of foreign works in the USSR is a matter of common knowledge.

As far as the property rights are concerned, a foreign author is not entitled to claim, for instance, compensation for the publication of his work in the USSR if it was earlier published elsewhere, and is accorded no protection in the USSR. This, however, does not rule out the possibility of royalties being paid by a publishing house. If the author has collaborated with the publisher in preparing a Russian edition he is entitled to remuneration, but it may also be paid in the absence of such collaboration. Even before the USSR acceded to the Universal Convention Soviet publishers had occasionally concluded contracts with foreign authors, although, as noted in the foregoing, works of foreign authors might be published in the USSR without their consent or a contractual arrangement. For example, in 1927, Gosizdat (State Publishers) concluded a contract with the American author Theodore Dreiser and subsequently large royalties were paid to the author at his request for the

past editions of his works in the Soviet Union.[1] Compensation was also paid to Upton Sinclair, Frank, Langston Hughes, Ethel Voinich and other authors. Sometimes royalties were paid to foreign scientists for their works published in the USSR. However, they might not claim royalties themselves since neither publishing houses nor performing organizations are obliged to pay compensation to foreign authors accorded no protection in the USSR.

[1] See Helen Dreiser. *My Life with Dreiser*. World, Cleveland-New York, 1951; R. E. Kennel. *Theodore Dreiser and the Soviet Union (1927-1945). A First-Hand Chronicle*. International Publishers Co., Inc., N.Y., 1969, pp. 59-60.

Chapter 6

THE LEGAL PROBLEMS OF THE PROTECTION AND USE OF WORKS OF SOVIET AUTHORS ABROAD

1. Soviet Legislation on the Protection of Works of Soviet Authors Abroad

Scientific, literary or artistic works of Soviet citizens published or otherwise used abroad may be accorded protection by both Soviet legislation and the law of the foreign state concerned or an international arrangement in effect between that state and the USSR. Soviet legislation on copyright protection of foreign authors is based on the principle of territoriality. At the same time, with respect to works of Soviet citizens it applies the principle of nationality. The Fundamentals of Civil Legislation provide that copyright protection is also granted to Soviet citizens for works first published or present in any tangible form in the territory of a foreign state (Article 97).[1]

A Soviet author is accorded protection by Soviet law without regard to the place of creation and publication of his work. For instance, a literary work of a Soviet author created and first published abroad is protected by Soviet law.

Similarly the author or his heirs enjoy copyright in a musical work first performed abroad, and in a work of imitative art created abroad. For example, the well-known Soviet artist Martiros Saryan made a large number of paintings during his sojourn in Paris between 1926 and 1928. His copyright in these paintings is

[1] The Fundamentals of Copyright Law of 1928 provided that "an author who is a Soviet citizen and his heirs shall be granted copyright protection in Soviet territory for works published in a foreign state or present in the form of a manuscript, a sketch or any other tangible form in the territory of a foreign state regardless of the existence between the USSR and that state of an arrangement provided for in Article 2" (paragraph 1, Article 3).

protected by Soviet law although they were created abroad.

In all these cases the author's nationality is of decisive importance for protection of his copyright. Is the protection accorded to works of Soviet citizens extended to works of those authors who were granted Soviet citizenship after such works had been created and published? In other words, does Soviet law protect works published abroad before their authors became Soviet citizens?

In the opinion of M. V. Gordon, protection must be granted "without regard to the time of creation of the work". "We protect," he wrote, "regardless of the time of their creation, the works of all authors who were granted Soviet citizenship as a result of the formation of the Soviet Republics of Latvia, Lithuania, and Estonia, and the liberation of the Western Ukraine."[1] This view appears well grounded and not only with regard to works whose authors became Soviet citizens as a result of the entry into the Soviet Union of certain republics in consequence of territorial changes. The author's Soviet citizenship at the time when the question of protection arises is regarded as a factor of decisive importance. The granting of Soviet citizenship to a foreign national or a stateless person entitles them and their heirs, as it seems to us, to protection of their rights under the provisions of Soviet law in works created or published abroad before their authors became Soviet citizens.[2] Naturally,

[1] M. V. Gordon. *Soviet Copyright Law*. Gosyurizdat Publishers, 1955, p. 36 (in Russian).

[2] It is of interest to see how this question is settled in the legislation of other socialist countries. For example, the Hungarian Copyright Law No. III of 1969 accords protection to a work published abroad, in particular, if its author is a Hungarian citizen (§ 2). Under the Copyright Law of the People's Republic of Bulgaria a Bulgarian citizen is granted copyright protection in Bulgarian territory for a work wherever created (paragraph 3 of Article 10). L. Avramov and V. Tajer point out that the law does not discriminate in the protection of authors who are Bulgarian citizens by origin, birthplace or naturalization. The rights of a Bulgarian citizen are protected in works whenever created. Protection is accorded, for instance, to a work created by a Bulgarian domiciled abroad as a foreign national if he later relinquished his foreign nationality and became a Bulgarian citizen (L. Avramov, V. Tajer. *Copyright Law in the People's Republic of Bulgaria*. Sofia, 1965, p. 289, in Bulgarian). The Polish copyright law accords protection to all works published in Polish regardless of the place of first publication.

this applies solely to works for which the term of protection has not expired under Soviet law. For works first published or present in tangible form in the territory of a foreign state protection is granted in the USSR not only to Soviet authors but also to their successors in title. As regards a Soviet author's successors in title other than his heirs they may be accorded protection under Article 97 of the Fundamentals as formulated in 1973. They were denied such protection before. There were cases where the rights in works of a Soviet composer first performed abroad were ceded under a contract to a society of copyright owners or a gramophone recording firm. In all such cases the rules of Soviet law for Soviet authors and their heirs did not apply to the author's successor in title who was a Soviet citizen (Article 97 of the Fundamentals of 1961).[1]

The extent and content of Soviet copyright protection are governed exclusively by Soviet law. This means, in particular, that works of Soviet authors first published abroad in foreign languages may not be translated in the USSR without their consent if they are accorded protection under Article 102 of the Fundamentals as formulated in 1973. A work of a Soviet author first published abroad may enjoy simultaneous protection in the USSR (under Soviet law) and abroad (in the country of publication under the provisions of its legislation or in another state under the provisions of the international arrangements to which the country of first publication is a party).

It should be noted that the professional unions of writers, composers, artists and other creative workers help protect the copyright of Soviet citizens not only in the USSR but also in other countries. For example, Article 27 of the Statute of the USSR Writers' Union endorsed by the 4th Congress of Writers of the USSR on May 26, 1967 stipulates that "the Board of the USSR Writers' Union shall protect the copyright and other rights of authors both in the USSR and abroad (through the offices of corresponding Soviet agencies)...".

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[1] Article 3 of the Fundamentals of Copyright Law of 1928 also contained a provision of this kind. See V. I. Serebrovsky. *The Problems of Soviet Copyright Law.* USSR Academy Press, 1956, p. 63; B. S. Antimonov, Y. A. Fleishits. *Copyright Law.* Gosyurizdat Publishers, 1957, pp. 65-66. (Both in Russian.)

The Copyright Agency of the USSR (VAAP) is called upon to perform important functions in this field. In accordance with its Statute its purpose is, in particular, to ensure the protection of the rights of Soviet authors and their successors in title in their works used abroad. A Soviet author may request VAAP to protect his rights and legitimate interests against infringement abroad. In such an event VAAP acts as a representative of the author or his successor in title under a contract.

2. Protection of Works of Soviet Authors Abroad Under the Provisions of International Treaties and Agreements

The copyright of Soviet citizens in literary, scientific and artistic works may be granted protection abroad in compliance with international treaties concluded by the USSR with other states and under the provisions of multilateral copyright conventions to which the USSR is a party and in certain cases even when it is not a party to such conventions.

The question of the conclusion of special copyright conventions has repeatedly arisen in the practices of treaty relations between the Soviet Union and other states.

The first trade agreement between the Soviet Republic and Great Britain of March 16, 1921 provided in Article XII: "It is agreed that all questions relating to the rights and claims of nationals of either party in respect of patents, trademarks, designs and copyrights in the territory of the other party shall be equitably dealt with in the treaty referred to in the preamble."[1] This provision implied the general treaty which was to be substituted for this trade agreement. The subsequent trade agreements with Britain, in particular, the provisional trade agreement of February 16, 1934, contained no provisions to the same effect.

The Soviet-Italian Treaty of Commerce and Navigation of February 7, 1924 also referred to the conclusion

[1] *League of Nations. Treaty Series. Publication of Treaties and International Engagements registered with the Secretariat of the League of Nations...*, Vol. 4, pp. 127-136.

of a special copyright convention. Article 18 of the Treaty stipulated that "the reciprocal protection of the rights of nationals of the High Contracting Parties ... in literary and artistic property shall be a matter for regulation in special conventions, which shall be concluded as soon as possible".

Pending the conclusion of these conventions, the aforesaid rights of industrial, literary and artistic property shall be exercised "by the nationals of one of the High Contracting Parties in the territory of the other within the limits and according to the procedure of the domestic legislation of the latter Party and of the international conventions, arrangements or treaties concluded by it with the nation most favoured in that respect."[1]

It was pointed out in the Soviet literature in that period that the parties to the treaty thereby granted each other most favoured treatment in matters of copyright.[2] This, however, was not quite so, since the aforesaid provision of Article 18 of the Treaty was limited by the final protocol which stipulated that "pending the conclusion of the conventions as envisaged in Article 18 neither of the two Contracting Parties shall claim for its nationals, on the strength of this Treaty as well as by virtue of the advantages deriving from the most-favoured-nation clause, rights and privileges wider than those it grants itself to nationals of the other Contracting Party". It followed from this provision that Soviet citizens were not entitled to claim greater protection in Italy than Italian nationals were granted in the USSR. Thereby Soviet citizens were denied copyright protection accorded by Italy to nationals of the countries of the Berne Union of which Italy was a member, since the USSR was not a party to the Berne Convention and did not accord the protection provided for in the Convention to Italian nationals in the USSR.

The conclusion of such special conventions for reciprocal protection of literary and artistic property, "which

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[1] *Collection of Effective Treaties, Agreements and Conventions Between the USSR and Foreign States*, Issue II, p. 114 (in Russian); *Dr. aut.*, 1925, No. 1, pp. 7-8.

[2] See, for instance, M. Plotkin. The Problem of Resolution of International Collisions in Copyright Law. *Mezhdunarodnaya Zhizn* (International Affairs), 1926, No. 8, pp. 54-55.

shall be concluded as soon as possible", was stipulated also in Article 13 of the Soviet-Norwegian Treaty of Commerce and Navigation of December 15, 1925. The same article provided that "pending the conclusion of these conventions, the aforesaid rights of industrial, literary and artistic property shall be exercised by the nationals of one of the High Contracting Parties in the territory of the other within the limits and according to the procedure of the domestic legislation of the latter Party and of the international conventions, arrangements or treaties concluded by it with the nation most favoured in that respect".[1]

The Treaty between the USSR and Germany signed on October 12, 1925 also referred to the need to grant reciprocal protection to literary and artistic property. Article 7 of the Agreement for the Protection of Industrial Property, which was incorporated in the Treaty, provided that "the High Contracting Parties shall enter as soon as possible into negotiations for the conclusion of an agreement on reciprocal protection of literary and artistic property".[2]

In view of the fact that a number of international treaties of the twenties referred to the need for concluding special agreements on copyright protection, the possibility of their conclusion and their content were discussed in the Soviet literature[3]. The most clear-cut view on this problem was formulated by M. Plotkin who argued that it was desirable to conclude bilateral arrangements which would accord special treatment to works of foreign authors in the USSR and protect the rights of Soviet authors abroad. He also maintained that a copyright convention should make provision to the effect that the author's exclusive right of translation of his work must not entitle him to forbid translation. "An exclusive right must con-

[1] *SZ SSSR*, 1926, Part I, No. 26, Item. 163; *League of Nations. Treaty Series...*, Vol. 4, pp. 9-37.

[2] The protocol of December 21, 1928 attached to the Treaty envisaged that the two governments "in the first half of 1929 at the earliest possible date shall enter into negotiations for the conclusion of an agreement regarding reciprocal protection of copyright in literary and artistic works".

[3] For greater detail see Y. A. Kantorovich. *Copyright Law*. Yurizdat Publishers, 1926, pp. 20-21; M. Plotkin. *Op. cit.*, pp. 53-59. (All in Russian.)

sist solely in the right to a royalty."[1] Shorter terms (roughly three to four years) were also proposed for the authors to use their right of translation.

With respect to works of fiction it was proposed that this right be granted with certain restrictions, while retaining full freedom of translation of scientific and educational works.[2]

The negotiations with Germany in 1931 on the conclusion of a convention for reciprocal copyright protection proved fruitless. It was pointed out in the German literature of that period that the German side could not agree to the principle of formal reciprocity (reciprocal extension of national treatment), as well as freedom of translation of scientific works being embodied in the Treaty. In relation to translation of other works, as well as performance of musical and dramatic works, it was proposed that reciprocal payments of royalties be made to their authors of Soviet and German nationality. Another subject of controversy was the term of protection of copyright.[3]

All of the aforesaid provisions of the treaties of commerce concluded before World War II were of no practical consequence. Formally, only the Treaty with Norway remained in force in the postwar period. A provision for the conclusion of a copyright convention was incorporated only in the 1948 Treaty of Commerce with Czechoslovakia.[4]

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[1] M. Plotkin. *Op. cit.*, p. 57.

[2] *Ibid.*, p. 58. Y. A. Kantorovich held the same opinion. (Y. A. Kantorovich. *Op. cit.*, pp. 20-21.)

[3] G. Klauer. Die Urheberrechtsverhandlungen in Moskau. *GRUR*, 1931, H. 9, S. 891-894; G. Kirstein. Die Verhandlungen über den Urheberrechtsschutz zwischen Deutschland und der UdSSR. *Börsenblatt*, 1931, N. 176, S. 709-711; A. Baum. Die deutsch-russischen Urheberrechtsverhandlungen im Lichte der internationalen Urheberrechtsentwicklung. *GRUR*, 1931, H. 10, S. 1061-1067. In the postwar literature see about this H. W. Baade. Deutschland, die Sowjetunion und das Urheberrecht. *Neue Juristische Wochenschrift*, 1955, H. 51/52, S. 1908-1909.

[4] Article 17 of the Treaty of Commerce and Navigation between the USSR and Czechoslovakia provided that "the High Contracting Parties shall enter in the near future into negotiations regarding the conclusion of agreements on the questions of settlement and for the protection of rights in literary and artistic property". (*Collection of Effective Treaties...*, Issue XIII, p. 359.)

In later years the USSR concluded bilateral arrangements for reciprocal protection of copyright with other socialist states.

In addition, copyright provisions are contained in special bilateral agreements, such as those the USSR had concluded with a number of states on co-operation in the field of radio and television broadcasting, as well as in cinematography. Such international agreements were signed by the State Television and Radio Committee of the USSR Council of Ministers with corresponding organizations in Canada, Cyprus, Denmark, Guinea, Iraq, Japan, Morocco, Sweden, and other states. The agreements provide for broad exchanges of broadcasting programmes, musical recordings, TV programmes, TV films, etc.

Let us discuss individual provisions of these agreements. For example, the agreement on co-operation in the field of radio and television broadcasting between the USSR and Morocco of October 27, 1966 stipulates that "the protection of copyright shall be enforced by the side supplying materials" in accordance with its domestic legislation (Article 8).[1]

The Soviet-Japanese agreement of November 8, 1968 contains a similar provision to the effect that the sending party shall bear the costs involved in the protection of copyright in the works used in the radio and television programmes forwarded by it (Article 5).[2]

The same provision is made in the Soviet-Italian agreement of January 13, 1973 (Article 6), the protocol on the exchanges in the field of television and radio broadcasting with the South-Western Radio network of the FRG (ARD) of October 6, 1972 (Article 10), the protocol on the exchanges in the field of television broadcasting with the Second German Television network of the FRG (ZDF) of November 9, 1972 (Article 10), and other agreements.

Thus, all of the above-mentioned agreements embody the principle of abidance by the law of the country where a work is used in a radio or television broadcast.

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[1] *Collection of Effective Treaties...*, Issue XXIV, p. 429.
[2] *Ibid.*, Issue XXV, p. 467.

The agreements on co-operation in the field of cinematography (with Italy and France) referred to individual questions of copyright. For example, the Franco-Soviet agreement of July 8, 1967 provides for the protection of cinematographic works (Article 18).[1]

The Soviet Union was also a party to some multilateral agreements affecting the questions of copyright. This refers in the first place to the peace treaties with Italy and other countries concluded in 1947. It should be noted immediately, however, that their provisions were of no practical consequence to the protection of Soviet authors.

In the postwar period the Soviet Union joined individual multilateral agreements for cultural and scientific co-operation affecting certain problems of copyright. One may refer, for instance, to the multilateral conventions of 1958 for exchanges of departmental publications and for international exchanges of publications, to which the USSR acceded in 1962.[2]

Thus, Soviet authors are protected abroad in the countries party to the multilateral international agreements joined by the Soviet Union and in the states with which it has concluded special agreements for reciprocal copyright protection.

Since in 1973 the USSR joined the Universal Copyright Convention of 1952, its provisions apply to all works of Soviet authors published in the USSR after the date on which the Convention became effective in the USSR, i.e., May 27, 1973. In the countries party to the Convention Soviet authors enjoy protection under the rules of both the Universal Convention and domestic legislation in conformity with the principle of national treatment.

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[1] Further, this agreement stipulates that "in an exchange of programmes the copyrights in which are under the jurisdiction of a third country, the Party sending such programme shall notify the other Party in advance of the possible costs involved in the use of this programme, and submit detailed information concerning the authors, composers, musicians, excerpts from films and whatever else may be related to the compensation of the copyright owner outside the country of the sender". (*Collection of Effective Treaties...*, Issue XXV, p. 376.)

[2] *Vedomosti Verkhovnogo Sovieta SSSR*, 1962, No. 37, Item 381; 1963, No. 7, Items 83-84.

3. The Legal Forms of the Use of Works of Soviet Authors Abroad with the Participation of Soviet Organizations

As pointed out above, Soviet authors may be protected abroad either under international agreements concluded by the Soviet Union with a foreign state, or multilateral conventions, or national legislation. Such protection is secured primarily by the Universal Copyright Convention to which the USSR is a party.

Formerly, Soviet authors were denied protection in the capitalist and developing countries because the Soviet Union was not a party to multilateral conventions and had no bilateral arrangements with such countries. Therefore, works of Soviet authors first published in the USSR might be translated, published or performed in other countries without the consent of the authors or the Soviet organizations possessing the rights in these works.

The broad interest in Soviet literary, scientific and artistic works, however, compelled publishing and other firms in the capitalist countries to enter into legal relations with Soviet organizations in connection with the publication and performance of Soviet works abroad.

The Soviet foreign trade organization V/O Mezhdunarodnaya Kniga (International Books) granted a foreign publisher by agreement an exclusive right for the publication and distribution of a book in a specified country. The two organizations—V/O Mezhdunarodnaya Kniga and the foreign publisher—assumed reciprocal obligations which were not binding on any third company, which was in a position to buy the same book in the Soviet Union and publish it without the consent of either V/O Mezhdunarodnaya Kniga or its foreign contractor.

As evidenced by a number of authors in the West European countries, this circumstance had a negative impact on the publication and distribution of Soviet works abroad. For example, the West German writer Rolf Italiaander, speaking at the 5th Congress of the International Federation of Translators (FIT), referred to the fact that some West German publishers abstained from the publication of Soviet authors precisely because any West German publisher might publish Soviet works, which were accorded no contractual or other legal pro-

tection, as was illustrated by cases of simultaneous publication in the FRG of one and the same work of a Soviet author. These publishers preferred to avoid competition of this sort.[1]

A delegation of US publishers who had visited the USSR arrived at an analogous conclusion. The delegation noted in its report that "without the protection of an exclusive right producing translations is risky, because two or more U.S. publishers might decide at the same time to translate a popular Soviet book".[2] In the opinion of the delegation, this risk factor greatly restricted the number of Soviet books being published in translation. It was declared also that although V/O Mezhdunarodnaya Kniga might provide such exclusive rights, the anti-trust laws of the United States permitted no restrictions on other American firms with respect to the publication of a particular book. "Even if enforcement could be obtained in the USA, publishers in Great Britain and Canada, or any other country, would still be free to publish other English-language translations."[3]

The Soviet Union's accession to the Universal Convention changed the conditions of using works of Soviet authors abroad.

The legal status of works of Soviet authors abroad (literary, musical and others) is dependent on whether it is a matter of protection and use of a work in a foreign state party to the Universal Convention (or a state with which the USSR has a bilateral arrangement) or in a state outside the Convention. In the countries party to the Universal Convention works of Soviet authors are protected by the above-discussed provisions of the Convention, as well as by the domestic law of the country where the work is used, in accordance with the principle of national treatment.

This means in practical terms that a literary work, for instance, first published in the USSR may not be translated and published in a country party to the Convention without the consent of the author or his successor in

[1] Rolf Italiaander. USSR: About the Necessity of a Copyright Agreement. *GEMA News*, No. 7 (May 1967), pp. 33-52.

[2] *Book Publishing in the U.S.S.R.* Report of the Delegation of U. S. Book Publishers Visiting the USSR. August 20-September 17, 1962, p. 106.

[3] *Ibid.*, p. 106.

title (Soviet publishing house or another Soviet organization). A foreign publisher is obliged, as a rule, to conclude a contract with the owner of the copyright in the work he intends to publish.

As for the performance of musical works when no contracts with the authors or their successors in title are normally concluded, fees for each performance are usually collected in the countries party to the Convention and transmitted to the country of the author by agreement between copyright organizations. The countries party to the Convention have a definite system of legal sanctions to prevent the publication or other utilization of works of foreign authors, Soviet authors in particular, in mutilated form.

A work of a Soviet author first published in a country party to the Universal Convention other than the USSR is accorded protection in all Contracting States. Such was the case with the book *The Russians in Outer Space* by the Soviet journalist Yevgeny Ryabchikov specially prepared by the Novosti Press Agency for publication abroad and first published in the USA by the Doubleday Company Inc. of New York. It will be recalled that the USA is a party to the Universal Convention.

Works of Soviet authors in countries not bound by international arrangements concluded with the USSR have a different status. In these countries works of Soviet authors first published in the USSR are accorded no protection under their domestic legislation. This means that any publisher in such country may freely use a work of a Soviet author and publish it without concluding any contract. A contract for the publication of a book concluded by a Soviet organization with a foreign publisher will not be binding on other publishers of the same country, and they may publish the same book in the same language simultaneously. In countries not bound by treaty relations with the Soviet Union there are no legal means of redress of infringements upon a Soviet author's rights (by prosecuting a claim in court, etc.).

The Soviet Union's accession to the Convention ensures the protection of works of Soviet authors in the majority of States and enables their use under contracts or otherwise in accordance with the established international practices.

Speaking of the use of works of Soviet authors in capitalist states, one should not forget that it has, as a rule, a profit motive. A book is published and a musical work is performed on condition of payment of compensation to the copyright owner. From the viewpoint of Soviet legislation it is a matter of foreign trade operations. Any contract for the publication of a work of a Soviet author abroad cannot be regarded otherwise than a deal which has all the characteristic features of a foreign trade contract: one of the sides is a foreign firm, the contract is to be performed abroad, the remuneration is to be paid in foreign currency. It is true, the object of such a deal is quite specific: it is not an ordinary commodity but the right of using a protected work of intellectual creation. This predetermines the definite specific features of such deals. The question arises as to the application to such deals of the legislation on the state monopoly of foreign trade.

The sale to or the purchase from a foreign firm of the right of using a work is a foreign trade operation which an individual citizen is not entitled to perform under Soviet law.[1]

In compliance with the principle of the monopoly of foreign trade it is for the Soviet state to determine the agencies and procedure for the performance of corresponding operations.[2]

The agencies authorized to implement these operations have not remained unchanged. Here are a few of them. Until 1944 such operations had been conducted by the Literary-Musical Agency under the USSR Society for

[1] *Legal Regulation of Foreign Trade in the USSR*. Vneshtorgizdat Publishers, 1961, p. 359. As far back as 1920 this problem arose in connection with the need to publish abroad literature of the greatest importance for the country. The resolution of the Council of People's Commissars of April 27, 1920 on book publication abroad stipulated that "contracts concluded for the publication of Russian editions abroad are subject to regulation according to the conventional procedure established in this field. The performance of these contracts on the spot is to be controlled according to the conventional procedure by the People's Commissariat of Foreign Trade and its agencies (§ 5)." Quoted from *Publishing in the Early Years of Soviet Government*. Collected Documents. Kniga Publishers, 1972, p. 73 (in Russian).

[2] For greater detail see V. S. Pozdnyakov. *The State Monopoly of Foreign Trade in the USSR*. Mezhdunarodniye Otnosheniya Publishers, 1969, p. 165 (in Russian).

Cultural Relations with Foreign Countries (VOKS). In 1944 the relevant powers of this agency were taken over by the foreign trade organization V/O Mezhdunarodnaya Kniga which handles operations in the export and import of books, newspapers, magazines, sheet music, etc.

Copyrights are also assigned to foreign firms by such organizations as V/O Sovexportfilm and V/O Sovinfilm—in the field of cinematography, and by the State Television and Radio Committee of the USSR Council of Ministers—in the field of radio and television. When the Novosti Press Agency (APN) was founded, it was authorized to assign the rights of using abroad works of Soviet authors specially produced at the request of APN for foreign organizations and firms.

Today the main Soviet organization responsible for the protection of works of Soviet authors and taking part in operations for the use of such works abroad is the Copyright Agency of the USSR (VAAP).

In keeping with the established international practices of the activity of similar organizations, the Agency is called upon to see that the rights of Soviet authors and their successors in title are not infringed upon abroad, above all, in the countries party to the Universal Convention. The Agency may manage in administrative and judicial bodies of foreign states cases connected with the protection of the legitimate interests of Soviet authors or their successors in title at their request. When informed of a fact of infringement of the rights of Soviet authors or Soviet organizations, the Agency is obliged to take such measures as may be necessary in compliance with the domestic legislation of the country concerned to prevent such infringement (for instance, the publication of a work without the consent of the copyright owner) or secure a redress.

The Agency is called upon to perform important functions in promoting the use of works of Soviet authors in foreign countries, in disseminating the best achievements of Soviet literature, science and culture abroad.

The Statute of VAAP provides that the Agency acts as an intermediary in the conclusion of agreements and concludes contracts with foreign juristic and natural persons for the use of works of Soviet authors abroad.

Thus, in handling operations involved in the use of

Soviet works of any kind (literary, musical, scientific, etc.) the Agency may mediate in the conclusion of contracts by other Soviet organizations or authors themselves or directly enter into contractual relations.

An author concluding a contract with a Soviet publishing house for the publication of his work in the USSR may assign to it his rights of using his work, in a foreign country in particular. Under such a contract the author may assign to the publisher his rights of using his work in another state if they were not assigned earlier to another organization, of which the author is obliged to inform the publisher before the conclusion of the present contract.

The publisher acquiring these rights undertakes for his part:

to inform the author of the proposals for the use of his work abroad;

to ensure in the conclusion of a contract for the use of a work abroad the protection of the personal rights and property interests of the author, as well as the possibility of alterations and additions which the author deems it necessary to make in the work. The above-mentioned terms of a standard publishing contract are valid during the whole term of protection of the copyright in a given work.[1]

The publishing house is entitled to assign its rights and duties to other organizations wholly or in part. It may also assign its rights of using a work of a Soviet author abroad. It may also assign such rights to VAAP.

Under the present conditions of application of various technical facilities for the dissemination of information and the expansion of the forms in which works are utilized, the activities of a variety of literary and musical agencies have become widely common in international practices. Suffice it to refer to the practices of literary-musical agencies in the United States and Britain. As demonstrated by these practices, an agent performs intermediary services, locates a publisher who would agree to publish the work, conducts negotiations, concludes contracts with him, etc. Agents advertize the work, communicate

[1] Analogous terms are included in the standard publishing contract for works of imitative art and in the standard publishing contract for musical works.

information about new works to publishers, book societies, and film producers. Their activities are especially important for the distribution of books abroad.

An American literary agent pointed out in this context that the author has to conclude a fairly complicated contract in each particular case. The agent is obliged to conduct negotiations, to draw up the terms of the contract and control their observance. The agent watches over the course of the sales of the book, collects and verifies publishers' reports on such sales, collects and transmits royalties to the author, and keeps an accurate check on such sums. The agent also takes such measures as may be necessary to protect the copyright of his clients, so that their works could not be used without their special permission.

The agent's role usually grows with the success of a work. For conducting negotiations for a republication, recording on film or a gramophone record, translation, filming for television or motion pictures, the author requests the assistance of a competent literary agent without whom it is difficult to understand the complicated legal and financial problems likely to arise.

VAAP is the Soviet agency which conducts negotiations with copyright owners, foreign authors and foreign firms, which requires special knowledge and specific experience.

The question of the procedure of assigning the rights of using works of Soviet authors abroad is connected with the activities of the Copyright Agency of the USSR and the implementation by it of the function of using such works abroad in compliance with the system of foreign trade monopoly in the USSR.

The Decree of the Presidium of the USSR Supreme Soviet of February 21, 1973 supplemented Article 98 of the Fundamentals of Civil Legislation with a second part, which reads as follows: "The procedure of the assignment by an author who is a citizen of the USSR of the right of using his work in the territory of a foreign state is established by legislation of the USSR."

The ordinance of the USSR Council of Ministers "On the Copyright Agency of the USSR" provides that the right to use (publish, perform in public or otherwise communicate) outside the USSR a work of a Soviet

author earlier published in Soviet territory may be assigned by the latter or his successor in title to a foreign user exclusively through the offices of the Copyright Agency of the USSR and with the consent of the Soviet first user of the work or another proprietor of the copyright in that work.

The rule for the transfer of a work for use abroad through the Copyright Agency of the USSR applies also to works not published in Soviet territory and elsewhere.

The ordinance stipulates that a work of a Soviet author not published in the territory of and outside the USSR may be transferred by the author or his successor in title for use abroad exclusively through the Copyright Agency of the USSR.

An infringement of the procedure established by this ordinance entails recognition of the deal as null and void, as well as other responsibility in accordance with Soviet law.

Thus, failure of the author or his successors in title to comply with the established procedure of transfer of an unpublished work (or a right to use a work published in the USSR) for use abroad, as well as a violation by a Soviet organization of the procedure of acquiring a right to use a published or unpublished work of a foreign author, renders the deal ineffective by virtue of part 3 of Article 14 of the Fundamentals of Civil Legislation of the USSR and the Union Republics. If it is decided in court that a deal concluded by the author or his successor in title for the transfer of a work for use abroad was made for a premeditated purpose contrary to the interests of the socialist state and society, the court exacts from the defendant in favour of the state all sums collected and due under the deal (part 6 of Article 14 of the Fundamentals). Officials guilty of a violation of the procedure of acquiring a right of using works of foreign authors by Soviet organizations and the financial loss caused thereby are answerable in accordance with Soviet law.[1]

The existing legislation provides for exceptions from the above-mentioned rule concerning the procedure of

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[1] Decree No. 3 of the Plenary Session of the USSR Supreme Court of March 14, 1975 (*Copyright Bulletin*, 1978, Vol. XII, No. 2, pp. 36-41).

assignment of works. For example, the State Committee of the USSR Council of Ministers for Cinematography may assign directly (without the mediation of VAAP) rights to use abroad in cinematographic productions works of Soviet authors (scenarios, musical compositions, motion pictures, etc.) made to order specially for such purpose, and the State Television and Radio Committee of the USSR Council of Ministers may directly assign rights of using abroad, in TV films, radio and TV broadcasts, works of Soviet authors produced to order specially for such purpose.

The Novosti Press Agency may, within its terms of reference, directly assign the rights of using abroad works of Soviet authors on socio-political subjects produced at the request of the Agency for foreign organizations and firms.

Any contract, however, concluded between the above-listed organizations and foreign users of rights in works of Soviet authors is subject to compulsory registration with VAAP.

Manuscripts of lectures, reports, and statements at conferences, symposiums, congresses and meetings to be taken out abroad may be published in their records obviating VAAP. Contracts for the use of such manuscripts abroad, however, must be registered with VAAP.

The established procedure of assignment of rights to use works of Soviet authors abroad is based on the principle of foreign trade monopoly and is nothing out of the ordinary in international practices.

A special procedure of concluding such contracts has been provided for in the legislation of a number of other socialist states.[1] This guarantees the protection

[1] For example, paragraph 20 of the Czechoslovak Law on Literary, Scientific and Artistic Works of March 25, 1965 stipulated that the author assigns his right to a foreign user through the offices of a competent socialist organization (*Bulletin of Czechoslovak Law*, 1966, No. 3, p. 52). In the GDR paragraph 2 of the Ordinance for Copyright Protection through the Copyright Bureau of February 7, 1966 established that the assignment of copyright by authors or other legally competent persons– nationals or institutions of the GDR (including publishing houses and enterprises)—to partners outside the limits of the GDR shall be subject to the permission of the Copyright Bureau before the contract is concluded. Royalties under such contracts concluded with the permission of the Bureau are transmitted by the Copyright Bureau for further payment to legally

of both the national interests of the socialist countries and the rights and interests of the authors whose works are used abroad.

A violation of the established procedure of assigning the right of using a work of a Soviet author abroad entails recognition of the deal as null and void, as well as other responsibility in accordance with the effective legislation. For instance, if a work of a Soviet author was handed over to a foreign user in contravention of the established procedure, the foreign publisher who first published a work abroad would not be entitled to make any claims concerning the further use of the work in Soviet territory. This directly follows from paragraph 4 of Article 97 of the Fundamentals as formulated by the Decree of February 21, 1973, which provides that foreign successors in title of Soviet authors enjoy protection of copyrights in Soviet territory in case such copyrights have been assigned to them according to the procedure established by Soviet law. Thus, a foreign publisher or another user intending to acquire the right of using a work of a Soviet author abroad must apply to VAAP.

It does not follow from this that a contract will necessarily be concluded by the Agency itself. Apart from the "minor rights" VAAP will usually act as an intermediary assisting the author in selecting a foreign licensee and drawing up the commercial terms of the contract. Since settlements are to be made through the Agency, it will sign the contract jointly with the author.

Other variants are also possible. For instance, in the case of the first publication of a work in the USSR, a Soviet publisher may acquire from the author a license for the use of the work abroad and then assign it to the Agency as an organization empowered to engage in foreign trade. Depending on the specific circumstances, for instance, the need for a foreign edition to be revised by the author or for a Soviet publisher to submit additional materials, VAAP as the license holder may invite the author himself or the Soviet publisher to take part in concluding the contract.

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competent persons. The Copyright Bureau controls contract performance and renders legal assistance (*GBL*, 1966, Teil. II No. 2, S. 107).

With regard to the rights of public performance of published works, including both "minor" and "major" rights, VAAP operates under Soviet legislation as a legal (obligatory) representative of the authors. As regards the protection of these rights abroad, as well as the rights of foreign authors in the USSR, the Agency has concluded agreements with corresponding copyright societies in other countries.

During the first year of its activities alone, VAAP concluded more than 400 such contracts for the use of works of Soviet authors abroad. Some of them refer to individual works, others to editions in many volumes or scientific and technical periodicals. For example, under a contract with the American corporation ITT, the latter was granted a license to reprint in English works published by VINITI, a Soviet scientific and technical information centre.

VAAP has concluded contracts for the publication of Soviet authors with the world's biggest publishers. Among them are the American MacMillan Company, the West German Bertelsmann Verlag, the French Editions Gallimard, and the Spanish Editorial Planeta. In 1974 foreign firms requested licenses for the publication of 1,290 works of fiction, and in 1975 more than 3,000. Of special importance is the conclusion of general cooperation agreements with publishing firms to lay down the procedure of mutual extension of licenses for the translation and publication of works, exchange of information on new books, etc.

It will be noted that the main terms of assignment and acquisition of copyright have been agreed with the national associations of publishers of Sweden, Finland, Denmark, Norway, and other countries.

VAAP advertizes abroad scientific, literary and artistic works of Soviet authors. Its functions also include:

collection and payment to authors of royalties under agreements (contracts) on the use of works of Soviet authors abroad and of foreign authors in the USSR, concluded through the offices of or directly by the Copyright Agency of the USSR;

collection and payment of royalties due to Soviet and foreign authors and their successors in title for the public performance of works in Soviet territory, collection and

payment of royalties due to Soviet authors and their successors in title for the public performance of works abroad; collection and payment to Soviet and foreign authors and their successors in title of additional fees for cinematographic and television films (except TV films made jointly with organizations and firms of foreign countries), for gramophone records, for the use of works of imitative art; collection and payment of royalties due to the heirs of Soviet authors for the use of their works in the USSR and elsewhere.

VAAP also performs registration of works of Soviet authors publicly performed in the USSR, as well as the authors themselves; maintains a record of other works of Soviet and foreign authors, royalties for which are paid through VAAP, and a record of these authors.

To perform its functions provided for in its Statute the Agency has its permanent representatives in the main foreign countries, and also concludes brokerage agreements with foreign juristic and natural persons for the representation and protection of its interests abroad.

In addition, VAAP concludes special working agreements with corresponding organizations of the countries party to the Universal Copyright Convention, as well as with organizations of those states with which the USSR has concluded bilateral arrangements for reciprocal protection of copyright.

During the first year of its existence VAAP concluded agreements with copyright societies of France, Britain, the FRG, Belgium, Portugal, with theatrical and musical agencies of Finland, Denmark, Japan, the USA, Spain, and the FRG.

As pointed out above, great importance is attached to agreements for mutual representation of interests. International practices show that such agreements between copyright organizations of different countries facilitate collection of fees, particularly for public performances. For example, there is in France a special organization (SACEM), which undertakes to collect fees due to French and foreign composers for the performance of their works in France. Under a corresponding agreement fees for a Soviet work thus performed will be collected by SACEM and transmitted to VAAP. The latter will

pay compensation directly to the Soviet composer concerned.

VAAP has concluded a similar agreement on mutual representation of interests with the West German copyright society GEMA.

VAAP handles all settlements in the payment of royalties to Soviet authors for the public performance, as well as other kinds of legal use of their work abroad without a contract.

Royalties are paid to the author after taxes in compliance with Soviet law. At the request of the Soviet author (or his heirs) the sum due to be paid is either transmitted to a "B"-type account at the USSR Bank for Foreign Trade or exchanged into bonds of V/O Vneshposyltorg if the royalty has been paid in convertible or similar currency, or paid to the author in roubles.

The taxation of royalties paid by foreign users for the publication, performance or other use of Soviet literary, scientific and artistic works abroad is governed by the Decree of the Presidium of the USSR Supreme Soviet of September 4, 1973. According to its provisions a progressive assessment rate is applied to sums of compensation paid by foreign users of works of Soviet or other authors domiciled in the USSR (except the author's heirs).

These rules do not apply to works specially produced for use outside Soviet territory (for instance, to an article or book written by a Soviet author at the request of a foreign publisher). Under the Decree of the Presidium of the USSR Supreme Soviet of May 12, 1975, royalties on such works are subject to conventional income tax levied on works published in the USSR.[1]

Compensation due to heirs of Soviet and foreign authors is taxed in accordance with surcharge rates.

The tax on the sums of royalties coming from foreign users or transmittable abroad, as well as on the sums paid to heirs of Soviet and foreign authors, is levied and exacted by the Copyright Agency of the USSR.

The symbol of copyright protection © is to appear on the copies of all works of Soviet authors to give reasonable claim of copyright. As pointed out above, a provision for

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[1] *Vedomosti Verkhovnogo Sovieta SSSR*, 1975, No. 21, Item 338

this symbol is contained in Article III of the Universal Copyright Convention.

The printing of this symbol and compliance with the provision of the Convention has yet another meaning: it enables location of the copyright owner who must be approached for a license for translation or other use of the work.

The copyright symbol © is printed on publications of all Soviet publishers, as well as government departments and organizations empowered to pursue publishing activities or release mechanical recordings of works.

It will be recalled that the copyright symbol consists of three elements: the graphic symbol © itself, the name of the copyright proprietor, and the year of first publication. The copyright may be owned by the first publisher of a work. The author usually assigns his right to dispose of his work abroad under a contract with a publishing house which acquires the copyright as his successor in title.

The rules for printing this symbol on works published in the USSR are laid down in special instructions.[1]

The development of the practices in the conclusion of contracts for the publication and public performance of works of Soviet authors abroad necessitates an analysis of some related problems which have not yet been discussed in the literature.

First, it is the problem of the application of law to such contracts. Soviet legislation contains no specific collision norms to this effect. As far as the law on business transactions in general is concerned, however, Article 125 of the Fundamentals of Civil Legislation contains a provision regarding formalities to be complied with in a transaction. It is stipulated that "the formalities in a transaction performed abroad are governed by the law of the country where it was concluded. A transaction, however, may not be pronounced null and void because of failure to comply with formalities if the requirements of

[1] "Instructions for the] Procedure of Application of the Copyright Symbol on Literary, Scientific and Artistic Works Published in the USSR" were approved by an order of the Chairman of the State Committee for Publishing, Printing and Book Trade of March 28, 1973. (*Bulleten Normativnykh Aktov Ministerstv i Vedomstv SSSR*, 1973, No. 7, pp. 44-46.

the legislation of the USSR and the Union Republic concerned have been duly complied with. It is a matter for domestic legislation in the USSR to prescribe the formalities and procedure to comply with in the conclusion of foreign trade transactions made by Soviet organizations, without regard to the place where such transactions are made." This article is applicable in principle to the contracts under discussion. It should also be borne in mind that Soviet organizations are required to conclude contracts in writing in accordance with Soviet statutory law.

The choice of the law to govern the content of a publishing contract with a foreign firm or organization is a more difficult question.

Although in the overwhelming majority of cases disputes and differences arising between the parties to such contracts will be resolved by amicable agreement without seeking judicial relief it is important to know the law of which country should apply here.

What collision principle should be taken as the governing one? Article 126 of the Fundamentals of Civil Legislation provides that "the rights and duties of the parties to a foreign trade transaction shall be governed by the law of the country where it is made unless otherwise prescribed by the agreement between the parties". In our view, however, the specific features of the contracts in question require a different solution. In the foreign literature the question of the application of law to publishing contracts with foreign contractors evoked a wide discussion.[1] That the law of the country where the publisher has his headquarters should prevail is the most reasonable view, in our opinion. Indeed, it is precisely in that country that the main activities in the performance of the contract take place. This principle coincides in the present case with the principle of applying the law of the country where the contract is performed (lex loci solutionis). Besides, problems of copyright protection may also arise in such cases. In virtue of the principle of territoriality applied to copyright protection it may be accorded by the country of the publisher.

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[1] About this see Y. Mackensen. *Der Verlugsvertrag im internationalen Privatrecht.* Bonn, 1964.

One might adduce arguments against such solution and in favour of the law of the country where the contract is made. As pointed out above, this principle applies to the content of foreign trade transactions in the USSR. If a publishing contract is considered as valid from the time of its signature by the author in his country where the contract was forwarded by the publisher, this may account for the application of the law of that country. As for disputes arising from a contract it is best to examine them through arbitration at the place where the defendant has his headquarters or domicile.

4. Protection of Soviet Authors by Foreign Domestic Legislation

The copyright of Soviet citizens in works first published or performed in the USSR is protected abroad by domestic legislation in the absence of an international arrangement between the USSR and the foreign state concerned.

In the overwhelming majority of states foreign authors are protected only if such states are party to international copyright agreements or accord protection on a basis of reciprocity.

For a long time the French law constituted a definite exception to this rule. Ever since the time of the French bourgeois revolution copyright was granted to all citizens, including foreign nationals, and no reciprocity was required at the same time. The law of July 19, 1793 stipulated no conditions for the protection of foreign authors but referred to copyright protection in general. Then the decree of 1852 directly prescribed the protection of the rights of foreign authors in works first published outside France. Article 1 of the decree forbade the counterfeiting in French territory of works published abroad. The formulation of the decree caused uncertainties. First of all, it failed to define clearly the sphere of its application (it remained uncertain, in particular, whether it applied to dramaturgical and musical works).[1] This legislation allowed French firms to acquire rights in works of some

[1] This was determined by court practices (see H. Desbois. La protection des œuvres étrangères en France (en l'absense de Convention). *Dr. aut.*, 1963, No. 9. pp. 225-226.

Soviet authors and secure protection for these rights, including the personal rights of authors, in French territory. For example, the society Le Chant du monde acquired through the USSR Composers' Union and V/O Mezhdunarodnaya Kniga an exclusive right to use a number of musical compositions in French territory and secured protection for works of Soviet composers in accordance with the above-mentioned provisions of French legislation.

The verdicts of French courts in the case of the film *The Iron Curtain* had a considerable role to play in the practical application of this legislation. This case arose from a lawsuit of Le Chant du monde against the American Fox Europa and Twentieth Century Fox companies. The essence of the case was as follows. The American motion picture company Twentieth Century Fox released an anti-Soviet film *The Iron Curtain*, using musical works of well-known Soviet composers—Prokofiev, Khachaturyan, Myaskovsky and Shostakovich—in defiance of their protests. The film was introduced into France by the American Fox Europa film-running company and showed in 1949 in a hall hired by a certain Mr. Lartigue in Paris. At the request of the Le Chant du monde society, which was a representative of and successor in title to the above-mentioned Soviet authors in France, the police commissar of the Faubourg du Roule quarter in Paris on July 7, 1949 arrested the film *The Iron Curtain* in accordance with Article 3 of the law of July 19, 1793. Then the US companies Twentieth Century Fox and Fox Europa, on the one hand, and Mr. Lartigue, on the other, brought an action with the Civil Court of the Seine Department against the Le Chant du monde society for the repeal of the arrest and damages. The arrest was repealed under the pretext that the Le Chant du monde society allegedly had no power of attorney from Soviet composers and therefore was not authorized to protect their interests. The American companies were awarded 3 million francs in damages and the director of the hall where the film was being shown at the time of confiscation was awarded 500,000 francs.

The society appealed against the verdict to the Paris Court. The American film companies involved in the litigation pleaded that foreign nationals whose country of origin had no international agreement with France in

this field might invoke only the decree of 1852, in particular, its special provision defining the extent of protection they are accorded in France. This decree regards as counterfeit only works illegally reproduced abroad and consequently did not apply to the film *The Iron Curtain* which was "legally" manufactured in the United States. Therefore, the claim of counterfeit maintained by the Le Chant du monde society was found to be groundless.

As was pointed out in the French literature, the court withheld its opinion on whether an act of counterfeit had been committed in the sense of the decree of 1852; it dismissed this objection, maintaining that the Le Chant du monde society had founded its suit not on that decree but on Article 3 of the law of July 19, 1793. The court applied this law without invoking the preamble of the decree of 1852 which for the first time in France had extended the law of 1793 and other legislative acts to works of foreign authors counterfeited outside French territory and brought into France.[1] The court verdict reaffirmed the legality of the arrest repealed by the court of first instance and awarded damages to the Le Chant du monde society from the American companies.

In the verdict of the Paris Court the application of the law of 1793, just as of the decree of 1852 earlier, was motivated by the existence of copyrights the authors enjoyed under Soviet national law. The verdict read in part: "...Under Soviet law, namely, the ordinance of May 16 and the law of October 8, 1928, the four composers concerned were accorded in the USSR the rights they have assigned to the Le Chant du monde society."[2]

Later the case was heard in the Civil Chamber of the Court of Cassation of France, which found in favour of the Le Chant du monde society on December 22, 1959. The verdict passed on the case by a court of such instance was of fundamental importance, and evoked numerous comments in the literature.[3] It referred to the fact that "for-

[1] K. Stoyanovitch. *Le droit d'auteur dans les rapports entre la France et les pays socialistes.* Paris, 1959, p. 226.

[2] For the text of the verdict see *Dr. aut.*, 1954, No. 1, pp. 16-17; *Rev. crit. de dr. int. pr.*, 1953, p. 739, et seq. About the verdict see *Revue trimestrielle de droit commercial*, 1953, p. 668; *Annales de la propriété industrielle*, 1953, p. 51.

[3] *Journal Dalloz*, 1960, p. 93; *Rev. crit. de dr. int. pr.*, 1960, p. 361; *Clunet*, 1961, p. 422.

eigners enjoy all civil rights in France unless otherwise directly stipulated by the law; no provision may deprive a foreign author of a literary or artistic work first published or performed outside France, as in the case in question, of his exclusive right to use his work in accordance with his copyright".

The importance of this verdict, besides being yet another evidence of the application of national treatment to foreign works first published or performed abroad, consisted also in that the decree of March 28, 1852 is construed in such a way as to enable a foreign dramatist or composer to claim in France protection not only for the right of reproduction of a work but also for the right of its performance.[1]

As regards the question of the law to be applied, however, that verdict, like the earlier one, was motivated in the main by the principle of the application of lex fori. The verdict said in part that the Court of Cassation, having found that the above-named composers and, equally, their successor in title, i.e., the society Le Chant du monde, enjoyed exclusive rights in these works under the legislation of the USSR, the country of origin of the works involved in the litigation, had resolved on the strength of the law that protection in civil law against the infringements of their rights committed in France shall be granted in accordance with French law without discrimination as to the place of first publication or performance of a work. This might lead one to conclude that the measures of enforcement and the procedure of exercise of copyrights are determined by the law of the court, i.e., the law of the country where protection is claimed. The main prerequisite for such protection, however, is the existence of copyright which is determined by the law of the country of origin of a work. The court proceeded from the fact that the French law extended protection to works of foreign authors if an exclusive right in a work was granted to the author in the country of origin at least in principle.

Such had been the court practice in France before the adoption of the law of July 8, 1964.

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[1] H. Desbois. *Op. cit.*, p. 225.

The decree of 1852 was abolished by the law on literary and artistic property No. 57-298 of March 11, 1957.[1] This law, however, far from altering the earlier practices in cases involving the rights of foreigners, even more strongly emphasized the assimilation of foreigners to French citizens. Article 70 of the law, which supplements Article 425 of the Criminal Code, provides: "Counterfeiting in French territory of works published in France or elsewhere is punishable by a fine.... This applies also to the marketing, importation, and exportation of counterfeit copies." Thus, a foreign work is protected against counterfeit in France without regard to the author's nationality and the country of first publication. If the latter is France, a work is protected by the French law even if the counterfeit has taken place in a foreign state.

Thus, works of Soviet authors were accorded in France full protection both by virtue of the decree of 1852 and the principle of full assimilation of foreign to national authors, which was abided by in court practices and later formalized in the law of March 11, 1957.[2]

The practices of protection in France of copyright in any work without regard to the country of first publication were revised in the mid-sixties[3]: a law conditioning protection of foreign works on reciprocity principle was passed on July 8, 1964.[4] A special decree was promulgated on March 6, 1967 by way of implementing that law.[5] What are the contents of the law and the decree applied in France, in particular to works of Soviet authors?

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[1] The law came into effect on March 14, 1958 and terminated the decree of 1852 on the same date. For the text of the law see *Dr. aut.*, 1957, No. 7, pp. 116-121; No. 8, pp. 133-137.

[2] K. Stoyanovitch. *Op. cit.*, p. 228.

[3] For a discussion of proposals for amendments in these practices, in particular, for incorporating the principle of reciprocity in French legislation see H. Desbois. *Op. cit.*, pp. 225-232.

[4] For the text of the law see *Journal officiel*, 9. VII. 1964. *Dr. aut.*, 1964, No. 9, p. 217; for an analysis of the law see A. Françon. La loi du 8 juillet 1964 sur l'application du principe de réciprocité en matière de droit d'auteur. *Rev. crit. de dr. int. pr.*, 1965, No. 2, pp. 279-303.

[5] See the text in *Journal officiel*, 10. III. 1967; for an analysis of the decree see A. Françon. Le décret d'application de la loi du 8 juillet 1964 en matière de protection du droit d'auteur. *Rev. crit. de dr. int. pr.*, 1967, No. 4, pp. 667-681.

Article 1 of the law stipulates that "subject to the provisions of any international convention to which France is a party, in a case where it is discovered, after consultation with the Minister for Foreign Affairs that a State does not grant to works which appeared for the first time in France, in any form whatsoever, sufficient and effective protection, works which appeared for the first time within the territory of that State shall not be protected by French law so far as copyright is concerned".

Thus, following the example of other countries France has promulgated the principle of reciprocity. However, as was pointed out in the government's explanation of the motives for the new law submitted to the National Assembly during the first hearing of the draft, protection to works of foreign authors is granted even in the absence of an international agreement between France and a foreign state. In other words, it is sufficient to establish actual reciprocity.

Article 1, which enacts the principle of reciprocity as a condition of protection of works of foreign authors in France, provides at the same time that "any derogation, however, of the integrity of the authorship of such works is forbidden".

It follows that under the law of 1964, just as under the preceding legislation, the personal rights of Soviet authors may be protected in France.

With regard to the payment of royalties for the use in France of works accorded no protection under the law of 1964 the following system is applied: royalties due, in particular, for the publication and performance of works are collected but paid not to the author but to specified organizations listed in the decree of 1967. Among them is the Society of Authors, Composers and Music Publishers (SACEM), etc. Contributions to corresponding funds and their use for purposes "of general or professional interest are subject to control by the government ministry in charge of the questions of culture" (Article 3 of the decree). Practically these sums are deposited on special accounts and saved.

The French law of July 8, 1964 does not apply to rights earlier acquired by French successors in title (Article 2 of the law). This article implies contracts for assignment of an exclusive right of translation and distribution in

France of works the rights in which had been registered (ont été déposés) in a certain state before the publication of the law. The retroactive force of the law of 1964 is limited by the retention of the rights acquired by the French successors in title before its publication.

The legislation of Argentina is of definite interest too. In that country copyright protection is granted to foreign authors on a par with Argentine citizens.[1] For a foreign author to collect royalties in Argentina, he must join an Argentine organization for copyright protection. It follows from this rule that works of Soviet authors, musical compositions performed in Argentina in particular, are protected by the Argentine copyright law.

As for the legislation of other states it embodies, as a rule, the principle of reciprocity in copyright protection for works first published abroad. At the same time, a foreign author may be entitled to claim protection for his personal rights even if the law contains no explicit provision to this effect. For example, E. Ulmer noted in his course of copyright law that in accordance with the prevailing point of view in the FRG foreign authors accorded no protection may at least claim protection for their personal rights.[2]

The review we have made presents not only a historical analysis. A similar situation may arise in the case of a work which is not entitled to protection under the Universal Convention, although the USSR and a relevant foreign state are both party to such Convention (for example, if a work was first published in the USSR before May 27, 1973). Practically, of course, Soviet organizations may agree with a foreign user for the terms of using such work. In the absence of an agreement or contract, however, no legal liability will arise, for example, for the payment of compensation.

In conclusion it is necessary to discuss another specific case: the copyright of Soviet authors abroad was protected and will be protected in isolated cases under the provisions of multilateral conventions to which the USSR is not a party.

As pointed out above, the Berne Convention affords

[1] Pedro Carlos Acebey. *Derecho de autor.* Buenos Aires, 1967, pp. 17-18.

[2] E. Ulmer. *Urheber- und Verlagsrecht*, S. 102.

protection to works of non-Unionist authors first published in a country of the Union (paragraph 1, Article 6). The Universal Convention also protects works of nationals of states outside the Convention, first published in the territory of a Contracting State.

It follows from this that if a work of a Soviet author was first published abroad (for instance, individual works of Maxim Gorky were first published by a Berlin publisher before the war),[1] these works are accorded protection in all other countries of the Berne Union.

An analogous rule is applied to musical compositions created or first published in countries party to the Berne or the Universal Convention. These works are protected in all such countries regardless of the author's nationality. Some works of the composer Sergei Prokofiev first published in Paris, Leipzig, and London may be cited as an example in point. Individual works of Prokofiev were published simultaneously in the USSR and in countries party to the Conventions. In these countries his compositions are accorded the protection of the relevant conventions.[2]

The copyright in a work of a Soviet author first published in a country of the Berne Union in translation and not in the language of the original was the subject of an animated discussion in the Western juridical literature. This question arose in connection with the obviously morbid interest of certain publishers in Boris Pasternak's novel *Doctor Zhivago*. This interest was motivated exclusively by a desire to use the novel for anti-Soviet purposes. The novel was first published in Italian by Feltrinelli Publishers of Milan. Later it was translated and published in more than twenty languages in other countries. Thus, in this case the "country of origin" of the work was Italy. In the opinion of E. Ulmer, the protection accorded by the Berne Convention, as well as by the Universal Convention, since Italy is a party to both, extends not only to the Italian translation but also to all the texts of the novel published in other languages, including the text of

[1] In the early twenties private publishers in Berlin brought out with Gorky's assistance a number of books in Russian by Gorky himself and other authors.

[2] From this emanates, in particular, the right of the composer's heirs to a corresponding compensation.

the original. The work would not have been protected only if it had first been published in the Soviet Union.[1] In the opinion of other authors, it is doubtful that a translation is eligible to protection in such cases because the original itself is denied protection in the countries of the Berne Union.[2] The first point of view concerning the protection of works first published in translation rather than in the language of the original prevails in the special literature on copyright.

With regard to simultaneous publication the Berne Convention provides that its protection applies to works of non-Unionist authors published simultaneously in a country outside the Union and in a country of the Union (paragraph 1 "b" of Article 3). This provision is of practical importance for works of Soviet authors published simultaneously in the USSR and in a country of the Berne Union.

The above-mentioned provisions had an important role to play in the past activities of V/O Mezhdunarodnaya Kniga and other Soviet organizations in the case of publication abroad of works of Soviet authors from manuscripts handed over by V/O Mezhdunarodnaya Kniga to foreign publishers (in the case of first publication abroad or simultaneous publication in the USSR and abroad) and unpublished musical works of Soviet composers circulated only in manuscript form in the USSR.[3] Since such publication is the first publication of a work of a Soviet author in a country party to a multilateral convention, this work is accorded protection in all countries bound by the Convention. The rights arising in this connection may be used by V/O Mezhdunarodnaya Kniga as a proprietor of copyright or another Soviet organization for the publication and distribution of a work in any other country party to the Berne or the Universal Convention. These circumstances account for the desire of foreign mu-

[1] E. Ulmer. Originalwerk und Bearbeitung im internationalen Urheberrecht. *GRUR, Int.*, 1964, H. 12, S. 613, et seq.

[2] This view was upheld, among others, by V. Goldbaum (*UFITA*, 1959, Bd. 29, S. 32-39; see also E. Ulmer. Urheberrechtsfragen in den Beziehungen zwischen Westen und Osten. *GRUR, Int.*, 1968, H. 12, S. 410).

[3] *Legal Regulation of Foreign Trade in the USSR*, Chapter XX (by A. N. Bykov). Vneshtorgizdat Publishers, 1961, p. 362 (in Russian).

sical publishers, who have concluded with V/O Mezhdunarodnaya Kniga contracts granting them an exclusive right of publication of works of Soviet composers in a specified country, to publish them simultaneously or almost simultaneously with their publication in the USSR.

As evidenced by E. Ulmer, the provisions of the Berne Convention concerning simultaneous publication were usually applied precisely in the musical field.[1]

The provisions of international agreements, even those to which the USSR is not a party, are of practical importance for the protection of works of Soviet authors in the case of co-production of motion pictures. If one of the co-producers of a motion picture is a firm of a country of the Berne Union, the protection of the Convention will extend to that motion picture.

[1] E. Ulmer refers to the practices of the Anglo-Soviet Music Press (E. Ulmer. *Op. cit. GRUR, Int.*, 1968, H. 12, S. 410).

Chapter 7

THE PROBLEMS OF COPYRIGHT IN CO-OPERATION BETWEEN THE USSR AND OTHER SOCIALIST COUNTRIES

1. The Importance of Cultural and Scientific Co-operation Between the USSR and Other Socialist Countries

The cultural revolution in the countries of the world socialist community has laid the groundwork for broad cultural and scientific co-operation among them. This co-operation contributes to the rapid and comprehensive advancement of their national culture, science and technology. Its organization on the principles of proletarian internationalism means that it is based on the foundation of equality and mutual assistance, profound respect for the culture of other nations, their national distinctiveness and traditions. The Communist Party of the Soviet Union in co-operation with the Communist and Workers' parties of the other socialist countries regards as its task in the cultural field the steady advancement of all forms of cultural co-operation and association of the peoples of the socialist countries, an exchange of cultural values, encouragement of joint creative activities of scientific, literary and art workers.[1] In his report at the 25th Congress of the CPSU, Leonid Brezhnev re-emphasized the importance of scientific co-operation among the socialist countries, collaboration between the mass media—radio, television and the press.[2]

The implementation of the comprehensive programme of socialist economic integration of the CMEA member countries adopted by the 25th session of CMEA in July 1971 creates the conditions required for this co-operation.

[1] *The 22nd Congress of the Communist Party of the Soviet Union.* Verbatim Report, Vol. III, Gospolitizdat Publishers, 1962, p. 330 (in Russian).

[2] *Documents and Resolutions. XXVth Congress of the CPSU*, Moscow, 1976, p. 13.

The growing role of science and technology in ensuring the high rates and effectiveness of the economic development of the CMEA member states demands more complete utilization of the possibilities and advantages of the international socialist division of labour and joint efforts of these states to solve scientific and technical problems of mutual interest.

Scientific and technological co-operation is an organic part of co-operation among the CMEA member states whose purpose is to help achieve the top level in the key fields of science and technology, to facilitate the speedy and wide application of scientific and technological achievements in the national economy.

Co-operation in the fields of science and technology is based on the close interaction and combination of its multilateral and bilateral forms, which makes it possible to take better account of the national interests and specific features of individual countries and to secure flexibility and promptitude in the solution of problems of interest to them.

The questions of developing cultural and scientific co-operation among the socialist countries are given close attention during the talks between their party and government delegations. These questions are settled in various treaties and agreements concluded by the Soviet Union with other socialist countries.

The special long-term cultural and scientific co-operation agreements between the Soviet Union and all other socialist countries have formalized the socialist principles on which it is based.[1] One example is the cultural and scientific co-operation agreement between the USSR and Poland of December 14, 1970.[2]

The preamble of the agreement proclaims in particular that the governments of the USSR and Poland have concluded this agreement "motivated by the vital interests of the construction of communism in the USSR and socialism in the PPR and consolidation of their ideological unity on the principles of Marxism-Leninism, and also

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[1] *International Law Forms of Co-operation Among the Socialist States*. Nauka Publishers, 1962, p. 325, et seq. (in Russian).

[2] *Vedomosti Verkhovnogo Sovieta SSSR*, 1971, No. 38, Item 374.

being firmly convinced that cultural and scientific ties serve such interests, bring the peoples of the two states closer together and have an important part to play in the mutual enrichment of their national cultures".

According to Article 1 of the Soviet-Polish agreement the High Contracting Parties undertake to facilitate the further development and deepening of co-operation in the field of science, higher learning, public education, culture, literature and publishing activities, imitative art, the press, music, theatrical art, cinematography, radio and television broadcasting, cultural education work and other fields. The agreement provides for wide application of various forms of co-operation. Let us discuss some of them.

In the scientific field it is envisaged, for instance, to set up joint scientific research co-ordinating agencies and editorial boards, render assistance in the publication of joint collections of articles and scientific monographs (Article 3), promote co-operation between publishing and book-dealing organizations, carry out reciprocal translation of the most interesting books in the fields of fiction, literature for young people and children, scientific and popular science publications of the other country, and publish joint editions on vital modern problems (Article 6). The two countries have undertaken to assist in the co-production of motion pictures, to encourage the development of direct ties between their press agencies, editorial staffs of newspapers and magazines, to perform joint radio and television broadcasts, to develop joint production of TV films, etc.

Inter-state programmes of cultural and scientific co-operation and working plans (protocols) are adopted by way of implementing co-operation agreements between individual government departments and organizations.

These agreements usually provide for the following main forms of using in one country literary, scientific or artistic works created in the other country: (1) translation, publication and distribution of books and other works of authors of the other country; (2) production, performance, exhibition and popularization of literary and artistic works of the other country; (3) showing and distribution of motion pictures of the other country, as well as joint production of motion pictures; (4) an exchange

of radio and television programmes, musical recordings, TV films and TV newsreels, as well as co-operation in the production of joint radio and television programmes and TV films.

Co-operation between publishers of the socialist countries, including publishers of scientific literature, holds an important place among these forms of co-operation. Soviet publishers are steadily widening the exchange of publishing programmes, mutual assistance in the publication of translated works, and preparations for the publication of joint works.

Publishers of the socialist countries co-operate in a variety of forms. As far back as April 1957 representatives of publishers from the socialist countries meeting at their first conference in Leipzig resolved to co-operate in such forms as an exchange of annual publishing programmes, lists of books recommended for translation, assistance in the publication of translated books, etc.[1] It was stipulated in particular that "concerning books accepted for translation each publishing house shall communicate to the other publishing house at its request such criticisms and suggestions as may be necessary for a publication (additions, amendments, etc.) and shall put the latter in touch with the author of the book to be translated whenever necessary".[2]

The conference also discussed the question of joint publications. It was pointed out in its recommendations that joint publications may be book series, scientific and art monographs, various editions for readers of different countries speaking the same language, translated dictionaries, scientific and technical handbooks, geographical maps, teaching and visual aids, etc. It was recommended with regard to each joint publication that "a special agreement shall be concluded to prescribe the organizational and economic terms for each country eventually to meet the material expense she can afford. It is desirable that such publications be made on a non-currency basis."[3]

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[1] Recommendations of the Conference of Publishers of the Socialist Countries. *Conference of Publishers of the Socialist Countries. Leipzig, April 1957.* Iskusstvo Publishers, 1958, pp. 265-267 (in Russian).

[2] *Ibid.*, p. 266.

[3] *Ibid.*, p. 268.

Reciprocal protection of the copyrights of citizens of the socialist countries is called upon to contribute to the continued improvement of the organization of cultural and scientific co-operation.

2. Bilateral Arrangements for Reciprocal Copyright Protection Between the USSR and Other Socialist Countries

The questions of reciprocal protection of copyright in the Soviet Union's relations with other socialist states are settled on the basis of the principle of territoriality universally accepted in international practices, and of the provisions for copyright protection of foreign nationals in the legislation of the USSR and other socialist states. The cultural co-operation of the socialist countries on the principles of socialist internationalism contributes to the continued development of this protection. The conclusion of conventions for reciprocal protection of copyright helps improve the organizational forms of co-operation, and is called upon to enhance the moral and material interest of the authors of scientific, literary and artistic works in developing this co-operation.

Co-operation in the field of copyright is organically linked with the general system of international cultural, scientific and technical co-operation between the countries of the socialist community.[1] Even the first inter-governmental agreements for cultural co-operation concluded between individual People's Democracies, when the system of their cultural relations was taking shape, provided that the contracting parties should encourage dissemination of cultural values, ensure the high quality of translations into their respective languages and reciprocal protection of copyright.[2]

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[1] A. I. Poltorak. The Legal Forms of Cultural and Scientific Co-operation Between the Socialist Countries. *International Law Forms of Co-operation of the Socialist Countries.* USSR Academy Press, 1962, p. 318, et seq. (in Russian).

[2] For example, the agreement between Czechoslovakia and Bulgaria of June 20, 1947 provided that "each Contracting Party shall ensure the protection of copyright..." (Article 10). Under the convention between Hungary and Romania of November 25, 1947 the

Thus, in these agreements the questions of copyright protection were bound up with the questions of diffusion of cultural values. The agreements on cultural co-operation, particularly those concluded by the Soviet Union during the last few years, also provide that the parties are obligated to contribute to creative co-operation in the field of literature and the arts, as well as to the production, performance and exhibition of corresponding works. The parties undertook to develop co-operation between publishers of their respective countries, to assist in translation, publication and dissemination of books, cinematographic works and TV films.[1]

The organic link of co-operation in the field of science and culture with reciprocal protection of copyright has the most salient expression in the agreement on cultural and scientific co-operation between the USSR and Poland of December 14, 1970. Its Article 14 provides: "The High Contracting Parties shall work out a system of copyright protection that will contribute to broad popularization of cultural values of both Parties in the field and on the terms stipulated in a bilateral or multilateral agreement."

Later the Soviet Union's agreements on cultural co-operation with other socialist countries began to be supplemented with bilateral arrangements on reciprocal protection of copyright. The first of them was the agreement with the Hungarian People's Republic for reciprocal protection of copyright.[2] It was concluded on November 17, 1967 for a short term (three years) with the object of

parties undertook to render assistance in translation and publication of scientific and literary works and provide for the legal protection of copyright (Article 8).

[1] See, for instance, the agreement for cultural and scientific co-operation between the USSR and Czechoslovakia of April 23, 1966. It provides, in particular, for co-operation between publishers by means of consultations, compilation of working programmes and joint publications (*Collection of Effective Treaties...*, Issue XXIV, pp. 542-546).

[2] *SP SSSR* (Collection of Ordinances of the USSR), 1967, No. 30, Item 213. The agreement came into force on January 1, 1968. Its conclusion was widely commented in the juridical literature in the USSR and elsewhere. See, in particular, I. Timar. The Soviet-Hungarian Agreement on Reciprocal Copyright Protection. *Sovietskoye Gosudarstvo i Pravo*, 1969, No. 8; M. M. Boguslavsky. Reciprocal Copyright Protection and Co-operation Between the Socialist Countries. *Sovietskoye Gosudarstvo i Pravo*, 1969, No. 3; M. M. Boguslawskij. Gegenseitiger Schutz der Urheberrechte.... *Ius auctoris*

testing the merits of this form of co-operation between the Soviet Union and another socialist country.

The three years of work in implementing the agreement demonstrated that it had helped considerably to develop cultural exchanges between the Soviet Union and Hungary. During that period Hungarian publishers concluded 404 publishing contracts with Soviet authors and Soviet publishers 138 contracts with Hungarian authors. Soviet periodicals published a large number of articles of Hungarian authors. Soviet theatres staged 15 dramatic and dramatico-musical works of Hungarian authors protected under the agreement. Over the same period, Hungarian organizations concluded with Soviet authors 34 contracts for theatrical productions, 6 contracts for the use of works arranged for radio and television programmes. The mutual use of works on a contractual basis facilitated protection of both the property and personal rights of authors, guaranteeing the authenticity of translations of their works.

This was followed by the conclusion of bilateral arrangements with other countries. On January 1, 1977 the Soviet Union had agreements for reciprocal protection of copyright with Hungary, Bulgaria, the GDR, Poland, and Czechoslovakia. These are as follows:

1. The agreement with the Hungarian People's Republic of November 30, 1967 came into force on January 1, 1968. By an exchange of notes on November 27, 1973 individual amendments were made in the agreement.[1] A new agreement was concluded on November 16, 1977; it came into force on January 1, 1978.[2]

2. The agreement with the People's Republic of Bulgaria was initially concluded on October 3, 1971. Later it was replaced by a new agreement concluded on January 16, 1975, which came into force on January 1, 1975.[3]

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vindicatum. Festgabe für Erich Schulze, München, 1973, S. 316-349; G. Boytha. Das Urheberrechtsabkommen zwischen der Sowjetunion und Ungarn im Spiegel der jüngsten Entwicklung der Urheberrechte beider Staaten. *GRUR, Int.*, 1969, H. 12, S. 439-445; I. Timar. La convention hungaro-soviétique en matière de droit d'auteur. *Dr. aut.*, 1968, pp. 68-71.

[1] *SP SSSR*, 1975, No. 18, Item 123.

[2] *Ibid.*, 1978, No. 3, Item 22.

[3] *Ibid.*, 1975, No. 7, Item 41.

3. The agreement with the German Democratic Republic was concluded on November 21, 1973. It came into effect on January 1, 1974.[1]

4. The agreement with the Polish People's Republic was concluded on October 4, 1974 and came into force on January 1, 1975.[2]

5. The agreement with the Czechoslovak Socialist Republic was concluded on March 18, 1975 and came into effect on the same date.[3]

It should be pointed out that agreements for reciprocal protection of copyright enable the parties to supply each other by an exchange of publishing programmes with more detailed information about forthcoming publications and to influence to a definite extent the selection of works intended for publication and performance in the other country. By making provision for the obligation of the parties to agree on the terms of using works of authors of one country in the other, the agreements provide a good opportunity for the study and analysis of the demand of the readers and spectators for works of authors of the other country.

The agreements for reciprocal protection of copyright provide that each party shall encourage publication of scientific, literary and artistic works of nationals of the other country; the inclusion of dramatic, dramatico-musical, musical and choreographic works of nationals of the other country in the repertoires of theatres, orchestras, musical companies and soloists of its own country (Article 1 of the agreement with Hungary; Article 1 of the agreement with Bulgaria; Article 1 of the agreement with the GDR; Article I of the agreement with Poland). The agreement with Czechoslovakia refers also to television and radio broadcasts and to motion pictures (Article 1).

One of the main distinctions of these agreements is, as pointed out above, their conclusion within the framework of general cultural co-operation between the Soviet Union and other socialist countries as a component part of the system of international scientific and cultural co-operation. This is also expressed in that the inter-governmental agreements are supplemented with a so-called working

[1] *SP SSSR*, 1975, No. 1, Item 7.
[2] *Ibid.*, No. 4, Item 28.
[3] *Vedomosti Verkhovnogo Sovieta SSSR*, 1975, No. 43, Item 684.

agreement between the copyright organizations of the Soviet Union and the country concerned. This fact is of crucial importance.[1]

Agreements between authors' organizations should be regarded as inter-departmental agreements. These are in essence international treaties. Therefore, obligations assumed by VUOAP and VAAP as its successor are obligations of the state, so the provisions of such agreements are binding on Soviet organizations. Since inter-governmental agreements provide that these organizations may conclude corresponding agreements, the latter's content is determined by the limits within which the governments of the two countries have authorized them to operate.

VAAP and its contractor in another socialist country (national copyright agency) are entrusted with the collection of fees for the public performance of dramatic, musical and other works in the absence of contracts for their use. In addition, authors' organizations are obligated to take part in the conclusion of contracts for the use of works, for the publication of literary and scientific works and for theatrical performances. These organizations handle reciprocal settlements in the payment of royalties. Therefore, VAAP is obligated to pay compensation to Soviet authors for the use of their works in another country, to calculate compensation to authors of a foreign socialist state and transmit royalties from the USSR to that country.

Authors' organizations also perform a number of other

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[1] On November 30, 1967 in Moscow the first such agreement was concluded by VUOAP with ARTISUS (the Hungarian Copyright Agency established by the resolution No. 106/1952 of the Hungarian Council of Ministers). After the prolongation of the Soviet-Hungarian agreement VUOAP concluded on April 8, 1971 working agreements with ARTISUS and the Hungarian Art Fund on the procedure of implementing the inter-governmental agreement. New working agreements were concluded on November 16, 1977.

On December 10, 1971 a working agreement was concluded with the Bulgarian Copyright Agency.

Organizations of this kind exist in all socialist countries, although their functions may differ. These are the Copyright Directorate in Bulgaria, the Copyright Bureau and the Department for Protection of Rights of Musical Performance (AWA) in the German Democratic Republic, the Society of Authors (ZAIKS) in Poland, and corresponding agencies in Czechoslovakia.

functions called upon to secure reciprocal protection of copyright in a planned and organized way.

Thus, the agreements for copyright protection concluded by socialist countries provide for a definite mechanism of their implementation (through the central copyright organizations of the socialist countries concerned).

Going over to an analysis of the provisions of copyright protection agreements, it is necessary to point out the features peculiar to the regulation of the Soviet Union's international law relations with other socialist countries in this field.

First, as distinct from other socialist countries, the Soviet Union has no uniform legislation on copyright for the whole territory of the country. Whereas in other socialist countries copyright is governed by a uniform law, in the Soviet Union, for all the general provisions in the Fundamentals of Civil Legislation on a number of questions of importance (determination of royalties, pay rates, etc.), copyright is governed by republican legislation, whose rules may differ.

Second, though their aims and general orientation coincide, there are important differences between the laws of the Soviet Union and other socialist countries.

Third, the Soviet Union and other socialist countries occupy a different place within the international system of copyright protection. For example, unlike the Soviet Union, some socialist countries are members of the Berne Union.[1]

It follows from this fact that the reciprocal protection of copyright in relations between the European socialist countries is based on the provisions of the Berne Convention, while their copyright relations with the Soviet Union require independent regulation. A different approach to participation in multilateral agreements and other circumstances naturally complicate somewhat the treaty regulation of the Soviet Union's copyright relations with other socialist countries but by no means rule out the possibility of successful settlement of these questions.

The bilateral treaty regulation of copyright relations is based on reciprocal national treatment.

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[1] These are Bulgaria, Czechoslovakia, the GDR, Hungary, Poland, Romania, and Yugoslavia.

The agreements for copyright protection between the Soviet Union and other socialist countries furnish the basis for mutual uses of copyrights in scientific, literary and artistic works. This means that in each country foreign authors are accorded the same protection that is enjoyed by its own nationals under its domestic legislation. For example, Article 2 of the Soviet-Czechoslovak agreement provides that "each Contracting Party shall recognize the copyrights of nationals of the other Contracting Party in literary, scientific and artistic works and accord them in its territory the same protection that it accords under its domestic legislation to works of its own nationals".

The range of subjects entitled to protection under the agreements may differ. The agreement with Hungary refers to the rights of authors and their successors in title—nationals of the other Contracting Party and of third countries—in works first published in the territory of the other Contracting Party; the agreement with Bulgaria provides for the protection of the rights of authors and their successors in title for their works wherever first published; the agreement with the GDR protects authors for their works wherever first published; the agreement with Czechoslovakia accords protection to authors of the other Contracting Party.

The widest range of subjects is indicated in the agreement with Poland. Its Article II refers to the rights of authors and organizations of the other country and their successors in title in works wherever first published, as well as to the rights of authors of third countries and their successors in title in works first published in the territory of the USSR or Poland.

Although successors in title are referred to only in the agreements with Hungary, Bulgaria and Poland, practically successors in title of authors of the GDR and Czechoslovakia are also accorded protection in the USSR. This is reflected in that contracts for the use of foreign works in the USSR (for instance, publishing contracts) may be concluded not only with authors but also with their successors in title (such as GDR publishers).

All the agreements contain provisions concerning the term of protection of copyright although they are worded differently.

The agreements with Hungary (Article 3), Poland (Article III) and Czechoslovakia (Article 4) provide that protection is granted for a term prescribed by the legislation of each Contracting Party; the latter, however, is not obliged to accord protection for a term longer than that granted in the legislation of the other Contracting Party. Simultaneously, the agreement with Czechoslovakia stipulates that the name of the author and the integrity of his work are protected without limitation as to time.

Under the agreements with Bulgaria and the GDR the term of protection is 25 years commencing from January 1 of the year following that of the author's death (Article 3 of the agreement with Bulgaria, Article 3 of the agreement with the GDR).

The agreement with the GDR stipulates that with regard to works of its own nationals as well as works first published in the territory of one of the Contracting Parties the term of protection in the GDR is governed by its domestic legislation.

A characteristic feature of the agreements between the USSR and other socialist countries is their retroactive force. This means that in one country protection is also granted to works first published in the other country before the date on which the agreement came into force. Such protection is accorded in the case of the use of a work provided that the term of protection prescribed under the agreement has not yet expired (Article 8 of the agreement with Hungary, Article 8 of the agreement with Bulgaria, Article 6 of the agreement with the GDR, Article VIII of the agreement with Poland, Article 3 of the agreement with Czechoslovakia).

Individual agreements regulate specific practical questions. It is envisaged, for example, that publication of unpublished works in both countries simultaneously and their first publication in the other country may be undertaken by agreement between competent organizations of the two countries (Article 2 of the agreement with the GDR, Article II of the agreement with Poland; the agreements with the GDR and Poland provide also for the dissemination in third countries of works of authors of one country by organizations of the other).

In the main, however, practical problems are regulated in working agreements concluded between copyright or-

ganizations. These agreements lay down rules governing the publication of works, their public performance and mechanical recording. They also make provision for the rates, procedure and terms of payment of royalties, the procedure of concluding contracts on specific uses of works.

All working agreements stipulate that all contracts for the use of works should be concluded exclusively through the offices of VAAP and the copyright organizations of other socialist countries.[1]

By way of implementing the working agreements concluded by VAAP with the copyright organizations of the GDR, Poland and Czechoslovakia, model forms of contracts for the assignment and acquisition of playrights in dramatic works have been drawn up.

Earlier, model forms of analogous contracts were agreed upon in relation to authors of Hungary and Bulgaria.

The content of a working agreement can be demonstrated by the example of the agreement between VAAP and the Polish Society of Authors (ZAIKS). This agreement provides that contracts for the use of works should be concluded through the offices of these copyright organizations, which will take within their terms of reference effective measures to expedite the settlement of all questions involved in the conclusion and performance of contracts. Whenever necessary both organizations will assist authors or their successors in title in the protection of their copyrights, in particular by representing them at administrative and judicial bodies.

Special attention is devoted in the agreement to the performance of the functions of these organizations in protecting the personal rights of authors. It is envisaged, in particular, that these organizations undertake reciprocally to display special concern for the protection of the personal (property) rights of authors and their successors in title when under the legislation effective in the USSR and Poland a work may be used without the consent of

[1] VAAP has concluded working agreements with the ARTISUS Copyright Agency and the Art Fund (Hungary), the Copyright Bureau and AWA (GDR), the Polish Society of Authors (ZAIKS), the Bulgarian Copyright Agency (USAUTOR), the Theatrical and Literary Agency of Czechoslovakia (DILIA) and the Slovak Literary Agency (LITA), the Slovak Union for Protection of Musical Copyright, the Association for Protection of Musical Copyright of Czechoslovakia, and the Czechoslovak Centre of Fine Arts.

or compensation to the author, as well as the moral and property rights of authors when under the legislation in force in the USSR and Poland a work may be used without the consent of the author but subject to the payment of compensation.

The copyright organizations of both countries have undertaken to adopt within their terms of reference such measures as may be necessary to ensure effective protection for the author's name and the integrity of his work.

Royalties to Polish authors for the publication of their works in the USSR are paid at a rate prescribed for the first and subsequent editions (for the first edition the rate is 60 per cent of the rates prescribed by the legislation of the USSR or a Union Republic), and for publications of Soviet authors in Poland a royalty on a book edition is calculated in percentage to the retail price of bound copies at a rate of 5 to 8 per cent.

The agreement provides that VAAP in the USSR and ZAIKS in Poland shall represent the interests of authors and collect fees for the public performance and mechanical reproduction of literary and musical works. The periods of reciprocal transmittal of sums collected for the publication and public performance of works, their remittance to the other country and the procedure of payment of compensation to the authors have also been stipulated.

There is a provision for reciprocal information on legislation and other material that may be useful for successful implementation of the agreement; for regular meetings of representatives of both organizations for an exchange of experience in the practical implementation of the working agreement.

The agreements also regulate the question of taxation. Under some agreements taxes are levied only in the country in which the author is domiciled (Article 4 of the agreement with Bulgaria, Article IV of the agreement with Poland, Article 5 of the agreement with Czechoslovakia and Article 5 of the agreement with Hungary), which rules out the possibility of double taxation. Under Article 4 of the agreement with Hungary (1967) taxes on royalties were imposed only in the country where the payment was made to the copyright owner; this also ruled out double taxation.

Article 4 of the agreement with Hungary provided an indirect solution to the question of a collision of laws. If

a tax was collected in the country where the author was paid compensation, the law of the country which made the payment was to be applied. However, the country where compensation was paid could not be the same country where a work was used. In the majority of cases such compensation was paid in the author's home country by the copyright organization which collected the tax on his royalty in accordance with the domestic legislation of that country.

It is usually provided that compensation of the author is paid in the currency of the country where his work has been used in accordance with the procedure prescribed for settlements in non-commercial payments (Article 4 of the agreement with the GDR, Article 4 of the agreement with Hungary, Article 5 of the agreement with Bulgaria, Article V of the agreement with Poland). The agreement with Czechoslovakia embodies the same principle.

This means practically that a royalty due to an author is calculated in the currency of the country where his work has been used and then transmitted, as a rule, in accordance with a non-commercial payments agreement to the country in which he is domiciled and paid to the author through the copyright organization of that country.

It is stipulated in the agreements that they do not affect the obligations of the Contracting Parties under other international agreements. Indirectly, however, they do affect the commitments of these countries under multilateral arrangements. For example, some socialist countries are members of the Berne Union. A work of a Soviet author may first be published in one of such countries, for instance, in Hungary and later in other countries of the Union. In such an event it will be accorded protection in all the countries party to this multilateral convention.

The forms of contracts used for authors from the socialist countries are of a recommendatory character. Such forms are used practically for making a contract for the publication of a literary work translated into a language of the USSR, a contract for the publication of a musical composition and a contract for the publication of a work of photographic or imitative art.[1] Under these forms of

[1] M. A. Voronkova. Standard Publishing Contracts. *Sovietskaya Yusttitsia*, 1975, No. 22, p. 5.

contracts a foreign author, as a rule, assigns to a Soviet publishing house through the offices of VAAP and the copyright agency of his socialist country the right of publication of his work translated into a language of the USSR. The contract is valid, as a rule, for five years. During this period the author is required to seek the consent of the publisher for the conclusion of contracts with other Soviet publishers for the publication of his work translated into the same language. At the same time, he may conclude a contract for the publication of this work in another language.

A Soviet publisher may, as a rule, hand over the license thereby obtained to another Soviet publisher, having notified the author. The publisher undertakes to publish the work in translation within 24 months of the date of making the contract. If the publisher for reasons beyond the author's control fails to fulfil his obligations and publish the author's work within the period specified in the contract, the author, as is stipulated in the forms of contracts with authors of the GDR and Czechoslovakia, shall be entitled to cancel the contract and retain the advance payment or (as is provided in the forms of contracts with authors of Bulgaria, Hungary and Poland) to collect the whole sum of compensation stipulated in the contract.

The contracts provide that disputes arising from a contract not settled by negotiations between the parties concerned should be referred to a court of law where the publisher has his headquarters or, as is provided in the form of a contract with an author of Czechoslovakia, to a court of law or arbitration where the defendant has his headquarters or is domiciled.

As for the contracts for the use of dramatic works in the USSR, in this case forms of contracts agreed upon with the copyright agencies of other socialist countries are applied too. The Soviet side in such contracts is represented by the Theatre Department of the Ministry of Culture (when the work is translated into Russian) and the Theatre Department of the Republic concerned (in the case of translation into another language of the USSR).

Under these contracts the Theatre Department is assigned the right of translation, as well as the exclusive right of performance of the work in translation.

The conclusion by the USSR of inter-governmental agreements with other socialist countries widens the sphere of liability relations with foreign contractors. These agreements provide for the conclusion of contracts for the use of scientific, literary and artistic works between Soviet authors and their successors in title, on the one hand, and competent foreign organizations, on the other. In the same way, authors of other socialist countries conclude contracts with Soviet organizations, such as publishing houses, for translation and publication of their works through the obligatory offices of copyright agencies. This tends to widen the range of cases in which Soviet citizens in accordance with the established procedure enter into liability relations with foreign (international) contractors.

The above analysis of individual provisions of bilateral agreements between the USSR and other socialist countries demonstrates that determination of the terms and procedure of reciprocal protection of copyright is linked inseparably with the efforts of the socialist states towards the continued expansion of cultural and scientific co-operation, the use of scientific, literary and artistic works in particular.

3. The Questions of Copyright in Scientific Works Created in the Process of Scientific and Technical Co-operation

Co-operation between the socialist countries in the field of science and technology is an important component of socialist economic integration. The CMEA member states concentrate their joint efforts by combining their scientific potentials on the solution of not only fundamental and exploratory research problems of crucial importance for long-term economic development but also important problems of applied science.[1]

The scope of joint research is continually growing, in view of which especially great importance attaches to the

[1] For greater detail see Comprehensive Programme for the Further Extension and Improvement of Co-operation and the Development of Socialist Economic Integration by the CMEA Member-Countries. *The Multilateral Economic Co-operation of Socialist States*, A Collection of Documents. Progress Publishers, Moscow, 1977, pp. 70-71.

legal protection of scientific works created in the process of joint research by scientists and specialists of different countries.

In fact, when the results of research performed by authors of a few countries are published in CMEA member states or in third countries, in certain cases some authors are paid royalties, while others are not.

The bilateral arrangements between socialist countries for reciprocal protection of copyright effectively contribute to the settlement of these problems in the early stage. Now that such agreements have been concluded between all socialist states a scientific work created in one country and published in another comes under the provisions of copyright law. The payment of royalties to scientists and specialists of another country and protection of their moral rights has a stimulating effect.

However, the conclusion of agreements between countries does not solve all of the problems arising. To identify these problems and devise ways of solving them, it is necessary to discuss if only in brief the forms used in performing joint research. This refers in the first place to the contractual form, the conclusion of various contracts for co-operation in research, including joint publications.

In the implementation of research, various organizational forms are used, which are determined in each particular case with a view to the goal and content of research on the basis of the generally accepted principles of co-operation between the CMEA member states. Multilateral agreements for research on selected problems of science and technology have assumed great importance. A number of bilateral inter-governmental agreements have been concluded on co-operation in research in specified fields.

Co-ordinating centres have been set up on the basis of the agreements to perform the functions of co-ordination in the planning and implementation by organizations of individual countries of co-operation programmes on specified problems. Sometimes temporary international research teams of scientists and specialists are formed to work under national organizations.

Joint laboratories or departments are set up to perform joint research and development, fundamental and applied research in the key fields of science and technology. Just

as international teams they operate under a national research or development organization.

Joint scientific and technological research is also conducted at international research institutes. They may be sponsored by government agencies or by research, development and other economic organizations, which operate as subjects of civil law.

In co-operation of research, as well as in joint implementation of programmes their individual parts are handled by national research organizations under contracts and working plans.

Let us examine in the first place the process of solving problems involved in the publication of scientific works created during research performance under agreements and contracts when the above-listed organizational forms of joint operations are not applied.

The terms of publication of progress reports and research results should be stipulated in a contract. This provision is of fairly great importance since in certain cases, particularly in fundamental research, a publication culminates the study. At the same time, the publication secures the priority of the authors, the national organization and, in the final analysis, of the state with regard to the scientific achievement expressed in the publication. It is by no means irrelevant, therefore, in which country the research results will be published. In view of the importance of such questions the normative documents regulating the conditions of bilateral cooperation between the USSR and other socialist countries, which are approved by inter-governmental agencies, provide that the parties to a contract should be aware that the research results may be published exclusively by agreement between them. Besides, to secure priority and invention rights no premature publication of such results is allowed.

Let us dwell on the significance of this rule in greater detail. First, an agreement or contract may stipulate that each party shall publish only the results of the research conducted in its territory. Second, with regard to joint research the parties may determine by mutual consent the country of first publication and the procedure involved. And finally, third, the date of first publication must be so chosen as not to prejudice the patent interests

of the parties, since premature publication will deprive the research results of the degree of innovation required to obtain certificates of authorship and other instruments of protection.

The largest number of legal problems requiring solution are posed by publication of joint research under a contract. The question of publication of joint research is practically part of the overall problem of joint publications in general. This may be a joint monograph or a collection of articles by authors from different countries. The following two variants of such collective publication are possible: (1) a scientific work published simultaneously in different languages and in different countries just like any other joint literary work; (2) a work prepared by authors of different countries published in only one country.

Simultaneous publication of a work created by authors of several countries involves specific problems of co-operation with authors, the payment of royalties, financial settlements, etc. Analogous problems arise also in the case of publication of a joint work in one country. It is hardly possible to solve them on the basis of the rules, provisions, and standard publishing contracts applied in individual countries, since they are not intended for such cases. The difficulty of solution is attributable not only to the absence in certain cases of international arrangements for reciprocal protection of copyright but also to differences between the legislations of the socialist countries. With regard to scientific works the main difference between the laws of the USSR and other socialist countries is that in the USSR no provision is made for the payment of compensation for scientific works produced in the course of the performance of one's routine official duties, with the exception of publication of educational literature. In the other countries, however, such rules are non-existent.

The application to joint publications of the collision principle of the author's national law (the law of citizenship) would institute several different régimes for authors of different countries with regard to their creative contribution to one and the same work. We believe, therefore, that the law of the country where a joint work is first published must be accepted as the basic law.

As far as Soviet legislation is concerned, in our view, it is necessary to make an exception to the non-compensation system and institute the payment of royalties regardless of whether a work has been performed under an official assignment or otherwise in order to stimulate Soviet research workers contributing to the production of scientific works jointly with authors from other socialist countries. Then the first publication of joint works in the USSR will also create a common legal régime for authors of such works from other socialist states.

All other problems involved in the first publication of a joint work in one of the countries (the payment of royalties for a part of the work translated from another language, compensation for republication, etc.) are settled in accordance with the law of the country of the publisher. In the case of a subsequent publication of such joint work in another country the questions of copyright will evidently be governed by the provisions of multilateral or bilateral agreements concluded between the country of the first and subsequent publications of the joint work. In the case of simultaneous publication a number of questions may be settled by agreement between publishers.

In all cases of publication of joint works, as well as the results of joint research, it appears indispensable to express in explicit form the joint character of the research performed. This may be done by indicating in the book, article or any other publication the names of the co-operating organizations of the country of which the authors are nationals, or otherwise.

What is the legal régime of publications of works carried out by international teams of scientists, as well as by joint laboratories and departments? These teams and departments are not independent subjects at law because they operate under national research organizations.

Co-operation agreements providing for the formation of international teams of scientists govern individual questions of publication of scientific works. For example, under the agreement for the formation of a working international team for reactor physics research of February 23, 1972 the results of research conducted by the team are presented in progress reports which are forwarded by

the director of the international team of scientists to the parties concerned.[1]

The contract for the formation of an international team of scientists under the Institute of Problems of Control (Automation and Remote Control) in Moscow concluded in accordance with the agreement of April 29, 1970 laid down a number of rules concerning publication (Article 9).

First, it was provided that "publication of research results and communication of relevant information to other persons shall be authorized in writing by [the director of the International Team of Scientists [by agreement with the members of the Council from the Parties represented in the International Team of Scientists". Second, it was provided that publication of the results of research performed by the International Team of Scientists must indicate the place of research.[2]

These provisions do not mean that the copyright in a work is ceded to the international team. The copyright is retained by the researchers but the team itself in the person of its director is invested with definite powers in relation to the publication of works. We believe that in the case of publication of research results in the USSR, i.e., in the country where the international team has its seat, the questions of the copyright of its members must be governed by Soviet law.

Analogous rules may be applied to works prepared at joint laboratories (departments).

International institutes and various other international organizations are set up on the basis of agreements between interested countries for the performance of joint research. In such cases it is a question of organizations having the status of juristic persons.

In international practices definite rules have formed in relation to the copyright in works created by members of such organizations. For example, the rules of the UN General Secretariat provide in paragraph 112.7 that all rights in works of UN employees created by them during the performance of their official duties,

[1] *Multilateral Economic Co-operation of the Socialist States* (Collected Documents). Yuridicheskaya Literatura Publishers, 1972, p. 509 (in Russian).

[2] *Ibid.*, p. 514.

including copyrights and patent rights, are owned by the United Nations.

The Charter of the international research organization CERN (European Nuclear Research Organization) at Geneva contains the provision to the effect that all rights, including the right to a title, copyright, the rights deriving from inventions and patents if such are available, arising in the process of the official activity of the members of personnel shall be vested in the Organization. The author shall retain the right to claim authorship in publications and patents if such are available. Thus, in this Organization the copyrights in works created by its members are appropriated by it.

How are analogous problems resolved in the international research organizations of the socialist countries? The oldest organization of this kind is the United Nuclear Research Institute at Dubna (UNRI). The Institute prepares a large number of publications annually.

The Charter of the Institute contains special provisions for the publication of joint research results. Article 4 of the Charter reads as follows: "The results of scientific research performed at the Institute shall be published or reported at scientific conferences and meetings for general information. Reports on completed works shall be distributed to all member states of the Institute."[1]

The statute on the personnel of UNRI adopted in January 1968 provides that the directorate of the Institute may in exceptional cases instruct members of the personnel not to divulge information on uncompleted research and other works, including works which may furnish the basis for inventions. Such instructions should be given in writing. A member of the personnel is obligated to follow them without fail.[2]

The Institute does not appropriate the copyright in works created by members of its personnel but the directorate is invested with definite powers in respect of publication of these works.

How is a work performed at the Institute indicated as such? This is done either by publishing it under the

[1] *Ibid.*, p. 401.
[2] *Ibid.*, p. 411.

name of the Institute or by mentioning it in other publications.

The question under discussion was settled in a somewhat different way in the establishment of the International Centre for Scientific and Technical Information under agreement between the governments of the CMEA member states of February 27, 1969. According to the regulations on the working conditions of the personnel of the Centre the results of the work performed by its members as their official duties are the property of the Centre and may not be published or otherwise used in lectures or reports without the consent of its Director.

The documents regulating the institution and activities of the Centre contain no special provisions on copyright. It appears that in handling these questions account must be taken not only of the specific features of the activities of the Centre but also of Soviet legislation as the law of the country where it has its seat.[1]

As regards the periodical information releases of the Centre the copyright in these publications as a whole must belong to the Centre. The authors of individual information reviews and of articles on problems of information theory published in such editions must be granted copyright in their works.

The treaty on the institution of the International Mathematical Centre in Warsaw of January 13, 1972 provides that "mathematicians taking part in the activities of the Centre shall enjoy the right of individual authorship in their research results in accordance with the legislation of their respective countries". At the same time, publications of the results of research performed at the Centre must indicate the place of performance.[2]

Thus, the following conclusions may be drawn with respect to scientific works created by staff members of international research organizations.

First, the copyright in such works created under official assignments is not transferred to organizations and is retained by the authors. This is their important

[1] The application of this legislation to questions not settled in the agreement or other normative acts referring to the Centre is provided for in Article V of the agreement (*Multilateral Economic Co-operation of the Socialist States*, p. 422).

[2] *Ibid.*, p. 615.

distinction from the régime of inventions made at such organizations, since the latter's claim to the rights in inventions is perfectly justifiable.

Second, organizations must be invested with definite powers with regard to the publication of such works.

Third, in all cases a publication must clearly indicate that a given scientific work has been produced by a given international organization.

* * *

The participation of the socialist states in the general multilateral copyright conventions (the Berne and the Universal Convention) does not rule out the need for them to conclude bilateral arrangements in this field. At the same time, the practices of concluding bilateral arrangements for reciprocal protection of copyright may eventually result in a multilateral copyright convention between the socialist countries. Unlike the existing multilateral agreements such a convention could make consistent provision for the protection of the moral rights of authors.

The conclusion of a multilateral convention could establish a uniform system of rules for all Contracting States to govern joint publications, including scientific works, which is of great importance for the continued development of multilateral scientific co-operation between the socialist countries.

APPENDICES

BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

of September 9, 1886,
completed at PARIS on May 4, 1896, revised at BERLIN on November 13, 1908, completed at BERNE on March 20, 1914, and revised at ROME on June 2, 1928, at BRUSSELS on June 26, 1948, at STOCKHOLM on July 14, 1967, and at PARIS on July 24, 1971

The countries of the Union, being equally animated by the desire to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works,

Recognizing the importance of the work of the Revision Conference held at Stockholm in 1967,

Have resolved to revise the Act adopted by the Stockholm Conference, while maintaining without change Articles 1 to 20 and 22 to 26 of that Act.

Consequently, the undersigned Plenipotentiaries, having presented their full powers, recognized as in good and due form, have agreed as follows:

Article 1

The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.

Article 2

(1) The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-

dimensional works relative to geography, topography, architecture or science.

(2) It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.

(3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.

(4) It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.

(5) Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.

(6) The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title.

(7) Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.

(8) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

Article 2bis

(1) It shall be a matter for legislation in the countries of the Union to exclude, wholly or in part, from the protection provided by the preceding Article political speeches and speeches delivered in the course of legal proceedings.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses and other works of the same nature which are delivered in public may be reproduced by the press, broadcast, communicated to the public by wire and made the subject of public communication as envisaged in Article 11*bis* (1) of this Convention, when such use is justified by the informatory purpose.

(3) Nevertheless, the author shall enjoy the exclusive right of making a collection of his works mentioned in the preceding paragraphs.

Article 3

(1) The protection of this Convention shall apply to:

(*a*) authors who are nationals of one of the countries of the Union, for their works, whether published or not;

(*b*) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

(2) Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country.

(3) The expression "published works" means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(4) A work shall he considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Article 4

The protection of this Convention shall apply, even if the conditions of Article 3 are not fulfilled, to:

(*a*) authors of cinematographic works the maker of which has his headquarters or habitual residence in one of the countries of the Union;

(*b*) authors of works of architecture erected in a country of the Union or of other artistic works incorporated in a building or other structure located in a country of the Union.

Article 5

(1) Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(3) Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of

origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.

(4) The country of origin shall be considered to be:

(*a*) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection;

(*b*) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;

(*c*) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that:

(i) when these are cinematographic works the maker of which has his headquarters or his habitual residence in a country of the Union, the country of origin shall be that country, and

(ii) when these are works of architecture erected in a country of the Union or other artistic works incorporated in a building or other structure located in a country of the Union, the country of origin shall be that country.

Article 6

(1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not habitually resident in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

(3) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Director General of the World Intellectual Property Organization (hereinafter designated as "the Director General") by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Director General shall immediately communicate this declaration to all the countries of the Union.

Article 6bis

(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in

relation to, the said work, which would be prejudicial to his honor or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

Article 7

(1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death.

(2) However, in the case of cinematographic works, the countries of the Union may provide that the term of protection shall expire fifty years after the work has been made available to the public with the consent of the author, or, failing such an event within fifty years from the making of such a work, fifty years after the making.

(3) In the case of anonymous or pseudonymous works, the term of protection granted by this Convention shall expire fifty years after the work has been lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protection applicable shall be that provided in paragraph (1). The countries of the Union shall not be required to protect anonymous or pseudonymous works in respect of which it is reasonable to presume that their author has been dead for fifty years.

(4) It shall be a matter for legislation in the countries of the Union to determine the term of protection of photographic works and that of works of applied art in so far as they are protected as artistic works; however, this term shall last at least until the end of a period of twenty-five years from the making of such a work.

(5) The term of protection subsequent to the death of the author and the terms provided by paragraphs (2), (3) and (4) shall run from the date of death or of the event referred to in those paragraphs, but such terms shall always be deemed to begin on the first of January of the year following the death or such event.

(6) The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs.

(7) Those countries of the Union bound by the Rome Act of this Convention which grant, in their national legislation in force at the time of signature of the present Act, shorter terms of protection than those provided for in the preceding paragraphs shall have the right to maintain such terms when ratifying or acceding to the present Act.

(8) In any case, the term shall be governed by the legislation of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work.

Article 7bis

The provisions of the preceding Article shall also apply in the case of a work of joint authorship, provided that the terms measured from the death of the author shall be calculated from the death of the last surviving author.

Article 8

Authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works.

Article 9

(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

(3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

Article 10

(1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

(2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.

(3) Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon.

Article 10bis

(1) It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press, the broadcasting or the communication to the public by wire of articles published in

newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.

Article 11

(1) Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing:

(i) the public performance of their works, including such public performance by any means or process;

(ii) any communication to the public of the performance of their works.

(2) Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

Article 11bis

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing:

(i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;

(ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;

(iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(3) In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization

by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

Article 11ter

(1) Authors of literary works shall enjoy the exclusive right of authorizing:

(i) the public recitation of their works, including such public recitation by any means or process;

(ii) any communication to the public of the recitation of their works.

(2) Authors of literary works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

Article 12

Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.

Article 13

(1) Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words, the recording of which together with the musical work has already been authorized by the latter, to authorize the sound recording of that musical work, together with such words, if any; but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(2) Recordings of musical works made in a country of the Union in accordance with Article 13(3) of the Conventions signed at Rome on June 2, 1928, and at Brussels on June 26, 1948, may be reproduced in that country without the permission of the author of the musical work until a date two years after that country becomes bound by this Act.

(3) Recordings made in accordance with paragraphs (1) and (2) of this Article and imported without permission from the parties concerned into a country where they are treated as infringing recordings shall be liable to seizure.

Article 14

(1) Authors of literary or artistic works shall have the exclusive right of authorizing:

(i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;

(ii) the public performance and communication to the public by wire of the works thus adapted or reproduced.

(2) The adaptation into any other artistic form of a cinematographic production derived from literary or artistic works shall,

without prejudice to the authorization of the author of the cinematographic production, remain subject to the authorization of the authors of the original works.

(3) The provisions of Article 13(1) shall not apply.

Article 14bis

(1) Without prejudice to the copyright in any work which may have been adapted or reproduced, a cinematographic work shall be protected as an original work. The owner of copyright in a cinematographic work shall enjoy the same rights as the author of an original work, including the rights referred to in the preceding Article.

(2) (*a*) Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed.

(*b*) However, in the countries of the Union which, by legislation, include among the owners of copyright in a cinematographic work authors who have brought contributions to the making of the work, such authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts, of the work.

(*c*) The question whether or not the form of the undertaking referred to above should, for the application of the preceding subparagraph (*b*), be in a written agreement or a written act of the same effect shall be a matter for the legislation of the country where the maker of the cinematographic work has his headquarters or habitual residence. However, it shall be a matter for the legislation of the country of the Union where protection is claimed to provide that the said undertaking shall be in a written agreement or a written act of the same effect. The countries whose legislation so provides shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

(*d*) By "contrary or special stipulation" is meant any restrictive condition which is relevant to the aforesaid undertaking.

(3) Unless the national legislation provides to the contrary, the provisions of paragraph (2)(*b*) above shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, or to the principal director thereof. However, those countries of the Union whose legislation does not contain rules providing for the application of the said paragraph (2) (*b*) to such director shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

Article 14ter

(1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers,

enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.

(3) The procedure for collection and the amounts shall be matters for determination by national legislation.

Article 15

(1) In order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. This paragraph shall be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity.

(2) The person or body corporate whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.

(3) In the case of anonymous and pseudonymous works, other than those referred to in paragraph (1) above, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity he shall be entitled to protect and enforce the author's rights. The provisions of this paragraph shall cease to apply when the author reveals his identity and establishes his claim to authorship of the work.

(4) (*a*) In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.

(*b*) Countries of the Union which make such designation under the terms of this provision shall notify the Director General by means of a written declaration giving full information concerning the authority thus designated. The Director General shall at once communicate this declaration to all other countries of the Union.

Article 16

(1) Infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection.

(2) The provisions of the preceding paragraph shall also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected.

(3) The seizure shall take place in accordance with the legislation of each country.

Article 17

The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control, or to prohibit, by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

Article 18

(1) This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection.

(2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew.

(3) The application of this principle shall be subject to any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle.

(4) The preceding provisions shall also apply in the case of new accessions to the Union and to cases in which protection is extended by the application of Article 7 or by the abandonment of reservations.

Article 19

The provisions of this Convention shall not preclude the making of a claim to the benefit of any greater protection which may be granted by legislation in a country of the Union.

Article 20

The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention. The provisions of existing agreements which satisfy these conditions shall remain applicable.

Article 21

(1) Special provisions regarding developing countries are included in the Appendix.

(2) Subject to the provisions of Article 28(1)(*b*), the Appendix forms an integral part of this Act.

Article 22

(1) (*a*) The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 22 to 26.

(*b*) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(*c*) The expenses of each delegation shall be borne by the Government which has appointed it.

(2) (*a*) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Convention;

(ii) give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as "the International Bureau") referred to in the Convention Establishing the World Intellectual Property Organization (hereinafter designated as "the Organization"), due account being taken of any comments made by those countries of the Union which are not bound by Articles 22 to 26;

(iii) review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;

(iv) elect the members of the Executive Committee of the Assembly;

(v) review and approve the reports and activities of its Executive Committee, and give instructions to such Committee;

(vi) determine the program and adopt the triennial budget of the Union, and approve its final accounts;

(vii) adopt the financial regulations of the Union;

(viii) establish such committees of experts and working groups as may be necessary for the work of the Union;

(ix) determine which countries not members of the Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(x) adopt amendments to Articles 22 to 26;

(xi) take any other appropriate action designed to further the objectives of the Union;

(xii) exercise such other functions as are appropriate under this Convention;

(xiii) subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization.

(*b*) With respect to matters which are of interest also to other Unions administerted by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) (*a*) Each country member of the Assembly shall have one vote.

(*b*) One-half of the countries members of the Assembly shall constitute a quorum.

(*c*) Notwithstanding the provisions of subparagraph (*b*), if, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the following conditions are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(*d*) Subject to the provisions of Article 26(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(*e*) Abstentions shall not be considered as votes.

(*f*) A delegate may represent, and vote in the name of, one country only.

(*g*) Countries of the Union not members of the Assembly shall be admitted to its meetings as observers.

(4) (*a*) The Assembly shall meet once in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(*b*) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee or at the request of one-fourth of the countries members of the Assembly.

(5) The Assembly shall adopt its own rules of procedure.

Article 23

(1) The Assembly shall have an Executive Committee.

(2) (*a*) The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its headquarters shall, subject to the provisions of Article 25(7)(*b*), have an *ex officio* seat on the Committee.

(*b*) The Government of each country member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(*c*) The expenses of each delegation shall be borne by the Government which has appointed it.

(3) The number of countries members of the Executive Committee shall correspond to one-fourth of the number of countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

(4) In electing the members of the Executive Committee, the

Assembly shall have due regard to an equitable geographical distribution and to the need for countries party to the Special Agreements which might be established in relation with the Union to be among the countries constituting the Executive Committee.

(5) (*a*) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.

(*b*) Members of the Executive Committee may be re-elected, but not more than two-thirds of them.

(*c*) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.

(6) (*a*) The Executive Committee shall:

(i) prepare the draft agenda of the Assembly;

(ii) submit proposals to the Assembly respecting the draft program and triennial budget of the Union prepared by the Director General;

(iii) approve, within the limits of the program and the triennial budget, the specific yearly budgets and programs prepared by the Director General;

(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;

(v) in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly, take all necessary measures to ensure the execution of the program of the Union by the Director General;

(vi) perform such other functions as are allocated to it under this Convention.

(*b*) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(7) (*a*) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

(*b*) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one-fourth of its members.

(8) (*a*) Each country member of the Executive Committee shall have one vote.

(*b*) One-half of the members of the Executive Committee shall constitute a quorum.

(*c*) Decisions shall be made by a simple majority of the votes cast.

(*d*) Abstentions shall not be considered as votes.

(*e*) A delegate may represent, and vote in the name of, one country only.

(9) Countries of the Union not members of the Executive Committee shall be admitted to its meetings as observers.

(10) The Executive Committee shall adopt its own rules of procedure.

Article 24

(1) (*a*) The administrative tasks with respect to the Union shall be performed by the International Bureau, which is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Industrial Property.

(*b*) In particular, the International Bureau shall provide the secretariat of the various organs of the Union.

(*c*) The Director General of the Organization shall be the chief executive of the Union and shall represent the Union.

(2) The International Bureau shall assemble and publish information concerning the protection of copyright. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of copyright.

(3) The International Bureau shall publish a monthly periodical.

(4) The International Bureau shall, on request, furnish information to any country of the Union on matters concerning the protection of copyright.

(5) The International Bureau shall conduct studies, and shall provide services, designed to facilitate the protection of copyright.

(6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee and any other committee of experts or working group. The Director General, or a staff member designated by him, shall be *ex officio* secretary of these bodies.

(7) (*a*) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 22 to 26.

(*b*) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.

(*c*) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at these conferences.

(8) The International Bureau shall carry out any other tasks assigned to it.

Article 25

(1) (*a*) The Union shall have a budget.

(*b*) The budget of the Union shall include the income and expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(*c*) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

(2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) The budget of the Union shall be financed from the fol lowing sources:

(i) contributions of the countries of the Union;

(ii) fees and charges due for services performed by the International Bureau in relation to the Union;

(iii) sale of, or royalties on, the publications of the International Bureau concerning the Union;

(iv) gifts, bequests, and subventions;

(v) rents, interests, and other miscellaneous income.

(4) (*a*) For the purpose of establishing its contribution towards the budget, each country of the Union shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows:

Class I	25
Class II	20
Class III	15
Class IV	10
Class V	5
Class VI	3
Class VII	1

(*b*) Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If it chooses a lower class, the country must announce it to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the session.

(*c*) The annual contribution of each country shall be an amount in the same proportion to the total sum to be contributed to the annual budget of the Union by all countries as the number of its units is to the total of the units of all contributing countries.

(*d*) Contributions shall become due on the first of January of each year.

(*e*) A country which is in arrears in the payment of its contributions shall have no vote in any of the organs of the Union of which it is a member if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

(*f*) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, in accordance with the financial regulations.

(5) The amount of the fees and charges due for services rendered by the International Bureau in relation to the Union shall be established, and shall be reported to the Assembly and the Executive Committee, by the Director General.

(6) (*a*) The Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Union. If the fund becomes insufficient, an increase shall be decided by the Assembly.

(*b*) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a pro-

portion of the contribution of that country for the year in which the fund is established or the increase decided.

(*c*) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(7) (*a*) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization. As long as it remains under the obligation to grant advances, such country shall have an *ex officio* seat on the Executive Committee.

(*b*) The country referred to in subparagraph (*a*) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(8) The auditing of the accounts shall be effected by one or more of the countries of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 26

(1) Proposals for the amendment of Articles 22, 23, 24, 25, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment of Article 22, and of the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

Article 27

(1) This Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.

(2) For this purpose, conferences shall be held successively in one of the countries of the Union among the delegates of the said countries.

(3) Subject to the provisions of Article 26 which apply to the amendment of Articles 22 to 26, any revision of this Act, including the Appendix, shall require the unanimity of the votes cast.

Article 28

(1) (*a*) Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification or accession shall be deposited with the Director General.

(*b*) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply to Articles 1 to 21 and the Appendix, provided that, if such country has previously made a declaration under Article VI(1) of the Appendix, then it may declare in the said instrument only that its ratification or accession shall not apply to Articles 1 to 20.

(*c*) Any country of the Union which, in accordance with subparagraph (*b*), has excluded provisions therein referred to from the effects of its ratification or accession may at any later time declare that it extends the effects of its ratification or accession to those provisions. Such declaration shall be deposited with the Director General.

(2) (*a*) Articles 1 to 21 and the Appendix shall enter into force three months after both of the following two conditions are fulfilled:

(i) at least five countries of the Union have ratified or acceded to this Act without making a declaration under paragraph (1)(*b*),

(ii) France, Spain, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, have become bound by the Universal Copyright Convention as revised at Paris on July 24, 1971.

(*b*) The entry into force referred to in subparagraph (*a*) shall apply to those countries of the Union which, at least three months before the said entry into force, have deposited instruments of ratification or accession not containing a declaration under paragraph (1)(*b*).

(*c*) With respect to any country of the Union not covered by subparagraph (*b*) and which ratifies or accedes to this Act without making a declaration under paragraph (1)(*b*), Articles 1 to 21 and the Appendix shall enter into force three months after the date on which the Director General has notified the deposit of the relevant instrument of ratification or accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 1 to 21 and the Appendix shall enter into force with respect to that country on the date thus indicated.

(*d*) The provisions of subparagraphs (*a*) to (*c*) do not affect the application of Article VI of the Appendix.

(3) With respect to any country of the Union which ratifies or accedes to this Act with or without a declaration made under paragraph (1)(*b*), Articles 22 to 38 shall enter into force three months after the date on which the Director General has notified the deposit of the relevant instrument of ratification or accession, unless a sub-

sequent date has been indicated in the instrument deposited. In the latter case, Articles 22 to 38 shall enter into force with respect to that country on the date thus indicated.

Article 29

(1) Any country outside the Union may accede to this Act and thereby become party to this Convention and a member of the Union. Instruments of accession shall be deposited with the Director General.

(2) (*a*) Subject to subparagraph (*b*), this Convention shall enter into force with respect to any country outside the Union three months after the date on which the Director General has notified the deposit of its instrument of accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, this Convention shall enter into force with respect to that country on the date thus indicated.

(*b*) If the entry into force according to subparagraph (*a*) precedes the entry into force of Articles 1 to 21 and the Appendix according to Article 28(2)(*a*), the said country shall, in the meantime, be bound, instead of by Articles 1 to 21 and the Appendix, by Articles 1 to 20 of the Brussels Act of this Convention.

Article 29bis

Ratification of or accession to this Act by any country not bound by Articles 22 to 38 of the Stockholm Act of this Convention shall, for the sole purposes of Article 14(2) of the Convention establishing the Organization, amount to ratification of or accession to the said Stockholm Act with the limitation set forth in Article 28(1)(*b*)(i) thereof.

Article 30

(1) Subject to the exceptions permitted by paragraph (2) of this Article, by Article 28(1)(*b*), by Article 33(2), and by the Appendix, ratification or accession shall automatically entail acceptance of all the provisions and admission to all the advantages of this Convention.

(2) (*a*) Any country of the Union ratifying or acceding to this Act may, subject to Article V(2) of the Appendix, retain the benefit of the reservations it has previously formulated on condition that it makes a declaration to that effect at the time of the deposit of its instrument of ratification or accession.

(*b*) Any country outside the Union may declare, in acceding to this Convention and subject to Article V(2) of the Appendix, that it intends to substitute, temporarily at least, for Article 8 of this Act concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as completed at Paris in 1896, on the clear understanding that the said provisions are applicable only to translations into a language in general use in the said country. Subject to Article I(6)(*b*) of the Appendix, any country has the right to apply, in relation to the right of translation of works whose country of origin is a country availing itself of such a reservation,

a protection which is equivalent to the protection granted by the latter country.

(*c*) Any country may withdraw such reservations at any time by notification addressed to the Director General.

Article 31

(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification at any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3) (*a*) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in which it was included, and any notification given under that paragraph shall take effect three months after its notification by the Director General.

(*b*) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.

(4) This Article shall in no way be understood as implying the recognition or tacit acceptance by a country of the Union of the factual situation concerning a territory to which this Convention is made applicable by another country of the Union by virtue of a declaration under paragraph (1).

Article 32

(1) This Act shall, as regards relations between the countries of the Union, and to the extent that it applies, replace the Berne Convention of September 9, 1886, and the subsequent Acts of revision. The Acts previously in force shall continue to be applicable, in their entirety or to the extent that this Act does not replace them by virtue of the preceding sentence, in relations with countries of the Union which do not ratify or accede to this Act.

(2) Countries outside the Union which become party to this Act shall, subject to paragraph (3), apply it with respect to any country of the Union not bound by this Act or which, although bound by this Act, has made a declaration pursuant to Article 28(1)(*b*). Such countries recognize that the said country of the Union, in its relations with them:

(i) may apply the provisions of the most recent Act by which it is bound, and

(ii) subject to Article I(6) of the Appendix, has the right to adapt the protection to the level provided for by this Act.

(3) Any country which has availed itself of any of the faculties provided for in the Appendix may apply the provisions of the Appendix relating to the faculty or faculties of which it has availed itself in its relations with any other country of the Union which is not bound by this Act, provided that the latter country has accepted the application of the said provisions.

Article 33

(1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

(2) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.

(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

Article 34

(1) Subject to Article 29bis, no country may ratify or accede to earlier Acts of this Convention once Articles 1 to 21 and the Appendix have entered into force.

(2) Once Articles 1 to 21 and the Appendix have entered into force, no country may make a declaration under Article 5 of the Protocol Regarding Developing Countries attached to the Stockholm Act.

Article 35

(1) This Convention shall remain in force without limitation as to time.

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Union.

Article 36

(1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.

(2) It is understood that, at the time a country becomes bound by this Convention, it will be in a position under its domestic law to give effect to the provisions of this Convention.

Article 37

(1) (*a*) This Act shall be signed in a single copy in the French and English languages and, subject to paragraph (2), shall be deposited with the Director General.

(*b*) Official texts shall be established by the Director General, after consultation with the interested Governments, in the Arabic, German, Italian, Portuguese and Spanish languages, and such other languages as the Assembly may designate.

(*c*) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.

(2) This Act shall remain open for signature until January 31, 1972. Until that date, the copy referred to in paragraph (1)(*a*) shall be deposited with the Government of the French Republic.

(3) The Director General shall certify and transmit two copies of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.

(4) The Director General shall register this Act with the Secretariat of the United Nations.

(5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Articles 28(1)(*c*), 30(2)(*a*) and (*b*), and 33(2), entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Articles 30(2)(*c*), 31(1) and (2), 33(3), and 38(1), as well as the Appendix.

Article 38

(1) Countries of the Union which have not ratified or acceded to this Act and which are not bound by Articles 22 to 26 of the Stockholm Act of this Convention may, until April 26, 1975, exercise, if they so desire, the rights provided under the said Articles as if they were bound by them. Any country desiring to exercise such rights shall give written notification to this effect to the Director General; this notification shall be effective on the date of its receipt. Such countries shall be deemed to be members of the Assembly until the said date.

(2) As long as all the countries of the Union have not become Members of the Organization, the International Bureau of the Organization shall also function as the Bureau of the Union, and the Director General as the Director of the said Bureau.

(3) Once all the countries of the Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

APPENDIX

Article I

(1) Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Appendix

forms an integral part, and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Act, may, by a notification deposited with the Director General at the time of depositing its instrument of ratification or accession or, subject to Article V(1)(*c*), at any time thereafter, declare that it will avail itself of the faculty provided for in Article II, or of the faculty provided for in Article III, or of both of those faculties. It may, instead of availing itself of the faculty provided for in Article II, make a declaration according to Article V(1)(*a*).

(2) (*a*) Any declaration under paragraph (1) notified before the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the said period. Any such declaration may be renewed in whole or in part for periods of ten years each by a notification deposited with the Director General not more than fifteen months and not less than three months before the expiration of the ten-year period then running.

(*b*) Any declaration under paragraph (1) notified after the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the ten-year period then running. Any such declaration may be renewed as provided for in the second sentence of subparagraph (*a*).

(3) Any country of the Union which has ceased to be regarded as a developing country as referred to in paragraph (1) shall no longer be entitled to renew its declaration as provided in para graph (2), and, whether or not it formally withdraws its declaration, such country shall be precluded from availing itself of the faculties referred to in paragraph (1) from the expiration of the ten-year period then running or from the expiration of a period of three years after it has ceased to be regarded as a developing country, whichever period expires later.

(4) Where, at the time when the declaration made under paragraph (1) or (2) ceases to be effective, there are copies in stock which were made under a license granted by virtue of this Appendix, such copies may continue to be distributed until their stock is exhausted.

(5) Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31(1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1), may, in respect of such territory, make the declaration referred to in paragraph (1) and the notification of renewal referred to in paragraph (2). As long as such declaration or notification remains in effect, the provisions of this Appendix shall be applicable to the territory in respect of which it was made.

(6) (*a*) The fact that a country avails itself of any of the faculties referred to in paragraph (1) does not permit another country to give less protection to works of which the country of origin is the former country than it is obliged to grant under Articles 1 to 20.

(*b*) The right to apply reciprocal treatment provided for in Article 30(2)(*b*), second sentence, shall not, until the date on which the period applicable under Article I(3) expires, be exercised in respect of works the country of origin of which is a country which has made a declaration according to Article V(1)(*a*).

Article II

(1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled, so far as works published in printed or analogous forms of reproduction are concerned, to substitute for the exclusive right of translation provided for in Article 8 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.

(2) (*a*) Subject to paragraph (3), if, after the expiration of a period of three years, or of any longer period determined by the national legislation of the said country, commencing on the date of the first publication of the work, a translation of such work has not been published in a language in general use in that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to make a translation of the work in the said language and publish the translation in printed or analogous forms of reproduction.

(*b*) A license under the conditions provided for in this Article may also be granted if all the editions of the translation published in the language concerned are out of print.

(3) (*a*) In the case of translations into a language which is not in general use in one or more developed countries which are members of the Union, a period of one year shall be substituted for the period of three years referred to in paragraph (2)(*a*).

(*b*) Any country referred to in paragraph (1) may, with the unanimous agreement of the developed countries which are members of the Union and in which the same language is in general use, substitute, in the case of translations into that language, for the period of three years referred to in paragraph (2)(*a*) a shorter period as determined by such agreement but not less than one year. However, the provisions of the foregoing sentence shall not apply where the language in question is English, French or Spanish. The Director General shall be notified of any such agreement by the Governments which have concluded it.

(4) (*a*) No license obtainable after three years shall be granted under this Article until a further period of six months has elapsed, and no license obtainable after one year shall be granted under this Article until a further period of nine months has elapsed

(i) from the date on which the applicant complies with the requirements mentioned in Article IV(1), or

(ii) where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license.

(*b*) If, during the said period of six or nine months, a translation in the language in respect of which the application was made is

published by the owner of the right of translation or with his authorization, no license under this Article shall be granted.

(5) Any license under this Article shall be granted only for the purpose of teaching, scholarship or research.

(6) If a translation of a work is published by the owner of the right of translation or with his authorization at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such translation is in the same language and with substantially the same content as the translation published under the license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

(7) For works which are composed mainly of illustrations, a license to make and publish a translation of the text and to reproduce and publish the illustrations may be granted only if the conditions of Article III are also fulfilled.

(8) No license shall be granted under this Article when the author has withdrawn from circulation all copies of his work.

(9) (*a*) A license to make a translation of a work which has been published in printed or analogous forms of reproduction may also be granted to any broadcasting organization having its headquarters in a country referred to in paragraph (1), upon an application made to the competent authority of that country by the said organization, provided that all of the following conditions are met:

(i) the translation is made from a copy made and acquired in accordance with the laws of the said country;

(ii) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;

(iii) the translation is used exclusively for the purposes referred to in condition (ii) through broadcasts made lawfully and intended for recipients on the territory of the said country, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;

(iv) all uses made of the translation are without any commercial purpose.

(*b*) Sound or visual recordings of a translation which was made by a broadcasting organization under a license granted by virtue of this paragraph may, for the purposes and subject to the conditions referred to in subparagraph (*a*) and with the agreement of that organization, also be used by any other broadcasting organization having its headquarters in the country whose competent authority granted the license in question.

(*c*) Provided that all of the criteria and conditions set out in subparagraph (*a*) are met, a license may also be granted to a broadcasting organization to translate any text incorporated in an audiovisual fixation where such fixation was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.

(*d*) Subject to subparagraphs (*a*) to (*c*), the provisions of the preceding paragraphs shall apply to the grant and exercise of any license granted under this paragraph.

(1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled to substitute for the exclusive right of reproduction provided for in Article 9 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.

(2) (*a*) If, in relation to a work to which this Article applies by virtue of paragraph (7), after the expiration of

(i) the relevant period specified in paragraph (3), commencing on the date of first publication of a particular edition of the work, or

(ii) any longer period determined by national legislation of the country referred to in paragraph (1), commencing on the same date,

copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any national of such country may obtain a license to reproduce and publish such edition at that or a lower price for use in connection with systematic instructional activities.

(*b*) A license to reproduce and publish an edition which has been distributed as described in subparagraph (*a*) may also be granted under the conditions provided for in this Article if, after the expiration of the applicable period, no authorized copies of that edition have been on sale for a period of six months in the country concerned to the general public or in connection with systematic instructional activities at a price reasonably related to that normally charged in the country for comparable works.

(3) The period referred to in paragraph (2)(*a*)(i) shall be five years, except that

(i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;

(ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

(4) (*a*) No license obtainable after three years shall be granted under this Article until a period of six months has elapsed

(i) from the date on which the applicant complies with the requirements mentioned in Article IV(1), or

(ii) where the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license.

(*b*) Where licenses are obtainable after other periods and Article IV(2) is applicable, no license shall be granted until a period of three months has elapsed from the date of the dispatch of the copies of the application.

(*c*) If, during the period of six or three months referred to in subparagraphs (*a*) and (*b*), a distribution as described in paragraph

(2)(*a*) has taken place, no license shall be granted under this Article.

(*d*) No license shall be granted if the author has withdrawn from circulation all copies of the edition for the reproduction and publication of which the license has been applied for.

(5) A license to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:

(i) where the translation was not published by the owner of the right of translation or with his authorization, or

(ii) where the translation is not in a language in general use in the country in which the license is applied for.

(6) If copies of an edition of a work are distributed in the country referred to in paragraph (1) to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such edition is in the same language and with substantially the same content as the edition which was published under the said license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

(7) (*a*) Subject to subparagraph (*b*), the works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction.

(*b*) This Article shall also apply to the reproduction in audio-visual form of lawfully made audio-visual fixations including any protected works incorporated therein and to the translation of any incorporated text into a language in general use in the country in which the license is applied for, always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Article IV

(1) A license under Article II or Article III may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce and publish the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as making the request, the applicant shall inform any national or international information center referred to in paragraph (2).

(2) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his applications, submitted to the authority competent to grant the license, to the publisher whose name appears on the work and to any national or international information center which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business.

(3) The name of the author shall be indicated on all copies of the translation or reproduction published under a license granted under Article II or Article III. The title of the work shall appear on

all such copies. In the case of a translation, the original title of the work shall appear in any case on all the said copies.

(4) (*a*) No license granted under Article II or Article III shall extend to the export of copies, and any such license shall be valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country in which it has been applied for.

(*b*) For the purposes of subparagraph (*a*), the notion of export shall include the sending of copies from any territory to the country which, in respect of that territory, has made a declaration under Article I(5).

(*c*) Where a governmental or other public entity of a country which has granted a license to make a translation under Article II into a language other than English, French or Spanish sends copies of a translation published under such license to another country, such sending of copies shall not, for the purposes of subparagraph (*a*), be considered to constitute export if all of the following conditions are met:

(i) the recipients are individuals who are nationals of the country whose competent authority has granted the license, or organizations grouping such individuals;

(ii) the copies are to be used only for the purpose of teaching, scholarship or research;

(iii) the sending of the copies and their subsequent distribution to recipients is without any commercial purpose; and

(iv) the country to which the copies have been sent has agreed with the country whose competent authority has granted the license to allow the receipt, or distribution, or both, and the Director General has been notified of the agreement by the Government of the country in which the license has been granted.

(5) All copies published under a license granted by virtue of Article II or Article III shall bear a notice in the appropriate language stating that the copies are available for distribution only in the country or territory to which the said license applies.

(6) (*a*) Due provision shall be made at the national level to ensure

(i) that the license provides, in favour of the owner of the right of translation or of reproduction, as the case may be, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned, and

(ii) payment and transmittal of the compensation: should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.

(*b*) Due provision shall be made by national legislation to ensure a correct translation of the work, or an accurate reproduction of the particular edition, as the case may be.

Article V

(1) (*a*) Any country entitled to make a declaration that it will avail itself of the faculty provided for in Article II may, instead, at the time of ratifying or acceding to this Act:

(i) if it is a country to which Article 30(2)(*a*) applies, make a declaration under that provision as far as the right of translation is concerned;

(ii) if it is a country to which Article 30(2)(*a*) does not apply, and even if it is not a country outside the Union, make a declaration as provided for in Article 30(2)(*b*), first sentence.

(*b*) In the case of a country which ceases to be regarded as a developing country as referred to in Article I(1), a declaration made according to this paragraph shall be effective until the date on which the period applicable under Article I(3) expires.

(*c*) Any country which has made a declaration according to this paragraph may not subsequently avail itself of the faculty provided for in Article II even if it withdraws the said declaration.

(2) Subject to paragraph (3), any country which has availed itself of the faculty provided for in Article II may not subsequently make a declaration according to paragraph (1).

(3) Any country which has ceased to be regarded as a developing country as referred to in Article I(1), may, not later than two years prior to the expiration of the period applicable under Article I(3), make a declaration to the effect provided for in Article 30(2)(*b*), first sentence, notwithstanding the fact that it is not a country outside the Union. Such declaration shall take effect at the date on which the period applicable under Article I(3) expires.

Article VI

(1) Any country of the Union may declare, as from the date of this Act, and at any time before becoming bound by Articles 1 to 21 and this Appendix:

(i) if it is a country which, were it bound by Articles 1 to 21 and this Appendix, would be entitled to avail itself of the faculties referred to in Article I(1), that it will apply the provisions of Article II or of Article III or of both to works whose country of origin is a country which, pursuant to (ii) below, admits the application of those Articles to such works, or which is bound by Articles 1 to 21 and this Appendix; such declaration may, instead of referring to Article II, refer to Article V;

(ii) that it admits the application of this Appendix to works of which it is the country of origin by countries which have made a declaration under (i) above or a notification under Article I.

(2) Any declaration made under paragraph (1) shall be in writing and shall be deposited with the Director General. The declaration shall become effective from the date of its deposit.

UNIVERSAL COPYRIGHT CONVENTION

as revised at Paris on 24 July 1971

The Contracting States,

Moved by the desire to ensure in all countries copyright protection of literary, scientific and artistic works,

Convinced that a system of copyright protection appropriate to all nations of the world and expressed in a universal convention, additional to, and without impairing international systems already in force, will ensure respect for the rights of the individual and encourage the development of literature, the sciences and the arts,

Persuaded that such a universal copyright system will facilitate a wider dissemination of works of the human mind and increase international understanding,

Have resolved to revise the Universal Copyright Convention as signed at Geneva on 6 September 1952 (hereinafter called 'the 1952 Convention'), and consequently,

Have agreed as follows:

Article I

Each Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture.

Article II

1. Published works of nationals of any Contracting State and works first published in that State shall enjoy in each other Contracting State the same protection as that other State accords to works of its nationals first published in its own territory, as well as the protection specially granted by this Convention.
2. Unpublished works of nationals of each Contracting State shall enjoy in each other Contracting State the same protection as that other State accords to unpublished works of its own nationals, as well as the protection specially granted by this Convention.
3. For the purpose of this Convention any Contracting State may, by domestic legislation, assimilate to its own nationals any person domiciled in that State.

Article III

1. Any Contracting State which, under its domestic law, requires as a condition of copyright, compliance with formalities such as deposit, registration, notice, notarial certificates, payment of fees or manufacture or publication in that Contracting State, shall regard these requirements as satisfied with respect to all works protected in accordance with this Convention and first published outside its territory and the author of which is not one of its nationals, if from the time of the first publication all the copies of the work published with the authority of the author or other copyright proprietor bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright.

2. The provisions of paragraph 1 shall not preclude any Contracting State from requiring formalities or other conditions for the acquisition and enjoyment of copyright in respect of works first published in its territory or works of its nationals wherever published.
3. The provisions of paragraph 1 shall not preclude any Contracting State from providing that a person seeking judicial relief must, in bringing the action, comply with procedural requirements, such as that the complainant must appear through domestic counsel or that the complainant must deposit with the court or an administrative office, or both, a copy of the work involved in the litigation; provided that failure to comply with such requirements shall not affect the validity of the copyright, nor shall any such requirement be imposed upon a national of another Contracting State if such requirement is not imposed on nationals of the State in which protection is claimed.
4. In each Contracting State there shall be legal means of protecting without formalities the unpublished works of nationals of other Contracting States.
5. If a Contracting State grants protection for more than one term of copyright and the first term is for a period longer than one of the minimum periods prescribed in Article IV, such State shall not be required to comply with the provisions of paragraph 1 of this Article in respect of the second or any subsequent term of copyright.

Article IV

1. The duration of protection of a work shall be governed, in accordance with the provisions of Article II and this Article, by the law of the Contracting State in which protection is claimed.
2. (a) The term of protection for works protected under this Conventions shall not be less than the life of the author and twenty-five years after his death. However, any Contracting State which, on the effective date of this Convention in that State, has limited this term for certain classes of works to a period computed from the first publication of the work, shall be entitled to maintain these exceptions and to extend them to other classes of works. For all these classes the term of protection shall not be less than twenty-five years from the date of first publication.
   (b) Any Contracting State which, upon the effective date of this Convention in that State, does not compute the term of protection upon the basis of the life of the author, shall be entitled to compute the term of protection from the date of the first publication of the work or from its registration prior to publication, as the case may be, provided the term of protection shall not be less than twenty-five years from the date of first publication or from its registration prior to publication, as the case may be.
   (c) If the legislation of a Contracting State grants two or more successive terms of protection, the duration of the first term shall not be less than one of the minimum periods specified in sub-paragraphs (a) and (b).
3. The provisions of paragraph 2 shall not apply to photographic

works or to works of applied art; provided, however, that the term of protection in those Contracting States which protect photographic works, or works of applied art in so far as they are protected as artistic works, shall not be less than ten years for each of said classes of works.

4. (a) No Contracting State shall be obliged to grant protection to a work for a period longer than that fixed for the class of works to which the work in question belongs, in the case of unpublished works by the law of the Contracting State of which the author is a national, and in the case of published works by the law of the Contracting State in which the work has been first published.
   (b) For the purposes of the application of sub-paragraph (a), if the law of any Contracting State grants two or more successive terms of protection, the period of protection of that State shall be considered to be the aggregate of those terms. However, if a specified work is not protected by such State during the second or any subsequent term for any reason, the other Contracting States shall not be obliged to protect it during the second or any subsequent term.
5. For the purpose of the application of paragraph 4, the work of a national of a Contracting State, first published in a non-Contracting State, shall be treated as though first published in the Contracting State of which the author is a national.
6. For the purpose of the application of paragraph 4, in case of simultaneous publication in two or more Contracting States, the work shall be treated as though first published in the State which affords the shortest term; any work published in two or more Contracting States within thirty days of its first publication shall be considered as having been published simultaneously in said Contracting States.

Article IVbis

1. The rights referred to in Article I shall include the basic rights ensuring the author's economic interests, including the exclusive right to authorize reproduction by any means, public performance and broadcasting. The provisions of this Article shall extend to works protected under this Convention either in their original form or in any form recognizably derived from the original.
2. However, any Contracting State may, by its domestic legislation, make exceptions that do not conflict with the spirit and provisions of this Convention, to the rights mentioned in paragraph 1 of this Article. Any State whose legislation so provides, shall nevertheless accord a reasonable degree of effective protection to each of the rights to which exception has been made.

Article Vbis

1. Any Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations may, by a notification deposited with the Director-General of the United Nations Educational,

Scientific and Cultural Organization (hereinafter called 'the Director-General') at the time of its ratification, acceptance or accession or thereafter, avail itself of any or all of the exceptions provided for in Articles *Vter* and *Vquater*.

2. Any such notification shall be effective for ten years from the date of coming into force of this Convention, or for such part of that ten-year period as remains at the date of deposit of the notification, and may be renewed in whole or in part for further periods of ten years each if, not more than fifteen or less than three months before the expiration of the relevant ten-year period, the Contracting State deposits a further notification with the Director-General. Initial notifications may also be made during these further periods of ten years in accordance with the provisions of this Article.
3. Notwithstanding the provisions of paragraph 2, a Contracting State that has ceased to be regarded as a developing country as referred to in paragraph 1 shall no longer be entitled to renew its notification made under the provisions of paragraph 1 or 2, and whether or not it formally withdraws the notification such State shall be precluded from availing itself of the exceptions provided for in Articles *Vter* and *Vquater* at the end of the current ten-year period, or at the end of three years after it has ceased to be regarded as a developing country, whichever period expires later.
4. Any copies of a work already made under the exceptions provided for in Articles *Vter* and *Vquater* may continue to be distributed after the expiration of the period for which notifications under this Article were effective until their stock is exhausted.
5. Any Contracting State that has deposited a notification in accordance with Article XIII with respect to the application of this Convention to a particular country or territory, the situation of which can be regarded as analogous to that of the States referred to in paragraph 1 of this Article, may also deposit notifications and renew them in accordance with the provisions of this Article with respect to any such country or territory. During the effective period of such notifications, the provisions of Articles *Vter* and *Vquater* may be applied with respect to such country or territory. The sending of copies from the country or territory to the Contracting State shall be considered as export within the meaning of Articles *Vter* and *Vquater*.

Article Vter

1. (a) Any Contracting State to which Article *Vbis* (1) applies may substitute for the period of seven years provided for in Article V (2) a period of three years or any longer period prescribed by its legislation. However, in the case of a translation into a language not in general use in one or more developed countries that are party to this Convention or only the 1952 Convention, the period shall be one year instead of three.
   (b) A Contracting State to which Article *Vbis* (1) applies may, with the unanimous agreement of the developed countries party to this Convention or only the 1952 Convention and in which the same language is in general use, substitute, in the

case of translation into that language, for the period of three years provided for in sub-paragraph (a) another period as determined by such agreement but not shorter than one year. However, this sub-paragraph shall not apply where the language in question is English, French or Spanish. Notification of any such agreement shall be made to the Director-General.

(c) The licence may only be granted if the applicant, in accordance with the procedure of the State concerned, establishes either that he has requested, and been denied, authorization by the owner of the right of translation, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as he makes his request he shall inform either the International Copyright Information Centre established by the United Nations Educational, Scientific and Cultural Organization or any national or regional information centre which may have been designated in a notification to that effect deposited with the Director-General by the government of the State in which the publisher is believed to have his principal place of business.

(d) If the owner of the right of translation cannot be found, the applicant for a licence shall send, by registered airmail, copies of his application to the publisher whose name appears on the work and to any national or regional information centre as mentioned in sub-paragraph (c). If no such centre is notified he shall also send a copy to the international copyright information centre established by the United Nations Educational, Scientific and Cultural Organization.

2. (a) Licences obtainable after three years shall not be granted under this Article until a further period of six months has elapsed and licences obtainable after one year until a further period of nine months has elapsed. The further period shall begin either from the date of the request for permission to translate mentioned in paragraph 1 (c) or, if the identity or address of the owner of the right of translation is not known from the date of dispatch of the copies of the application for a licence mentioned in paragraph 1 (d).

(b) Licences shall not be granted if a translation has been published by the owner of the right of translation or with his authorization during the said period of six or nine months.

3. Any licence under this Article shall be granted only for the purpose of teaching, scholarship or research.

4. (a) Any licence granted under this Article shall not extend to the export of copies and shall be valid only for publication in the territory of the Contracting State where it has been applied for.

(b) Any copy published in accordance with a licence granted under this Article shall bear a notice in the appropriate language stating that the copy is available for distribution only in the Contracting State granting the licence. If the writing bears the notice specified in Article III (1) the copies shall bear the same notice.

(c) The prohibition of export provided for in sub-paragraph (a) shall not apply where a governmental or other public entity

of a State which has granted a licence under this Article to translate a work into a language other than English, French or Spanish sends copies of a translation prepared under such licence to another country if:

(i) the recipients are individuals who are nationals of the Contracting State granting the licence, or organizations grouping such individuals;

(ii) the copies are to be used only for the purpose of teaching, scholarship or research;

(iii) the sending of the copies and their subsequent distribution to recipients is without the object of commercial purpose; and

(iv) the country to which the copies have been sent has agreed with the Contracting State to allow the receipt, distribution or both and the Director-General has been notified of such agreement by any one of the governments which have concluded it.

5. Due provision shall be made at the national level to ensure:

(a) that the licence provides for just compensation that is consistent with standards of royalties normally operating in the case of licences freely negotiated between persons in the two countries concerned; and

(b) payment and transmittal of the compensation; however, should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.

6. Any licence granted by a Contracting State under this Article shall terminate if a translation of the work in the same language with substantially the same content as the edition in respect of which the licence was granted is published in the said State by the owner of the right of translation or with his authorization, at a price reasonably related to that normally charged in the same State for comparable works. Any copies already made before the licence is terminated may continue to be distributed until their stock is exhausted.

7. For works which are composed mainly of illustrations a licence to translate the text and to reproduce the illustrations may be granted only if the conditions of Article V*quater* are also fulfilled.

8. (a) A licence to translate a work protected under this Convention, published in printed or analogous forms of reproduction, may also be granted to a broadcasting organization having its headquarters in a Contracting State to which Article V*bis* (1) applies, upon an application made in that State by the said organization under the following conditions:

(i) the translation is made from a copy made and acquired in accordance with the laws of the Contracting State;

(ii) the translation is for use only in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;

(iii) the translation is used exclusively for the purposes set out in condition (ii), through broadcasts lawfully

made which are intended for recipients on the territory of the Contracting State, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;

(iv) sound or visual recordings of the translation may be exchanged only between broadcasting organizations having their headquarters in the Contracting State granting the licence; and

(v) all uses made of the translation are without any commercial purpose.

(b) Provided all of the criteria and conditions set out in sub-paragraph (a) are met, a licence may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation which was itself prepared and published for the sole purpose of being used in connexion with systematic instructional activities.

(c) Subject to sub-paragraphs (a) and (b), the other provisions of this Article shall apply to the grant and exercise of the licence.

9. Subject to the provisions of this Article, any licence granted under this Article shall be governed by the provisions of Article V, and shall continue to be governed by the provisions of Article V and of this Article, even after the seven-year period provided for in Article V (2) has expired. However, after the said period has expired, the licensee shall be free to request that the said licence be replaced by a new licence governed exclusively by the provisions of Article V.

*Article V*quater

1. Any Contracting State to which Article V*bis* (1) applies may adopt the following provisions:

(a) If, after the expiration of (i) the relevant period specified in sub-paragraph (c) commencing from the date of first publication of a particular edition of a literary, scientific or artistic work referred to in paragraph 3, or (ii) any longer period determined by national legislation of the State, copies of such edition have not been distributed in that State to the general public or in connexion with systematic instructional activities at a price reasonably related to that normally charged in the State for comparable works, by the owner of the right of reproduction or with his authorization, any national of such State may obtain a non-exclusive licence from the competent authority to publish such edition at that or a lower price for use in connexion with systematic instructional activities. The licence may only be granted if such national, in accordance with the procedure of the State concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to publish such work, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as he makes his request he shall inform either the international copyright information centre established by the United Nations Educational, Scientific and Cultural Organization

or any national or regional information centre referred to in sub-paragraph (d).

(b) A licence may also be granted on the same conditions if, for a period of six months, no authorized copies of the edition in question have been on sale in the State concerned to the general public or in connexion with systematic instructional activities at a price reasonably related to that normally charged in the State for comparable works.

(c) The period referred to in sub-paragraph (a) shall be five years except that:
   (i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;
   (ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

(d) If the owner of the right of reproduction cannot be found, the applicant for a licence shall send, by registered air mail, copies of his application to the publisher whose name appears on the work and to any national or regional information centre identified as such in a notification deposited with the Director-General by the State in which the publisher is believed to have his principal place of business. In the absence of any such notification, he shall also send a copy to the international copyright information centre established by the United Nations Educational, Scientific and Cultural Organization. The licence shall not be granted before the expiration of a period of three months from the date of dispatch of the copies of the application.

(e) Licences obtainable after three years shall not be granted under this Article:
   (i) until a period of six months has elapsed from the date of the request for permission referred to in sub-paragraph (a) or, if the identity or address of the owner of the right of reproduction is unknown, from the date of the dispatch of the copies of the application for a licence referred to in sub-paragraph (d);
   (ii) if any such distribution of copies of the edition as is mentioned in sub-paragraph (a) has taken place during that period.

(f) The name of the author and the title of the particular edition of the work shall be printed on all copies of the published reproduction. The licence shall not extend to the export of copies and shall be valid only for publication in the territory of the Contracting State where it has been applied for. The licence shall not be transferable by the licensee.

(g) Due provision shall be made by domestic legislation to ensure an accurate reproduction of the particular edition in question.

(h) A licence to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:
   (i) where the translation was not published by the owner of the right of translation or with his authorization;
   (ii) where the translation is not in a language in general use in the State with power to grant the licence.

2. The exceptions provided for in paragraph 1 are subject to the following additional provisions:
   (a) Any copy published in accordance with a licence granted under this Article shall bear a notice in the appropriate language stating that the copy is available for distribution only in the Contracting State to which the said licence applies. If the edition bears the notice specified in Article III (1), the copies shall bear the same notice.
   (b) Due provision shall be made at the national level to ensure:
      (i) that the licence provides for just compensation that is consistent with standards of royalties normally operating in the case of licences freely negotiated between persons in the two countries concerned; and
      (ii) payment and transmittal of the compensation; however, should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.
   (c) Whenever copies of an edition of a work are distributed in the Contracting State to the general public or in connexion with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the State for comparable works, any licence granted under this Article shall terminate if such edition is in the same language and is substantially the same in content as the edition published under the licence. Any copies already made before the licence is terminated may continue to be distributed until their stock is exhausted.
   (d) No licence shall be granted when the author has withdrawn from circulation all copies of the edition in question.
3. (a) Subject to sub-paragraph (b), the literary, scientific or artistic works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction.
   (b) The provisions of this Article shall also apply to reproduction in audio-visual form of lawfully made audio-visual fixations including any protected works incorporated therein and to the translation of any incorporated text into a language in general use in the State with power to grant the licence; always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connexion with systematic instructional activities.

Article VI

'Publication', as used in this Convention, means the reproduction in tangible form and the general distribution to the public of copies of a work from which it can be read or otherwise visually perceived.

Article VII

This Convention shall not apply to works or rights in works which, at the effective date of this Convention in a Contracting State where protection is claimed, are permanently in the public domain in the said Contracting State.

Article VIII

1. This Convention, which shall bear the date of 24 July 1971, shall be deposited with the Director-General and shall remain open for signature by all States party to the 1952 Convention for a period of 120 days after the date of this Convention. It shall be subject to ratification or acceptance by the signatory States.
2. Any State which has not signed this Convention may accede thereto.
3. Ratification, acceptance or accession shall be effected by the deposit of an instrument to that effect with the Director-General.

Article IX

1. This Convention shall come into force three months after the deposit of twelve instruments of ratification, acceptance or accession.
2. Subsequently, this Convention shall come into force in respect of each State three months after that State has deposited its instrument of ratification, acceptance or accession.
3. Accession to this Convention by a State not party to the 1952 Convention shall also constitute accession to that Convention; however, if its instrument of accession is deposited before this Convention comes into force, such State may make its accession to the 1952 Convention conditional upon the coming into force of this Convention. After the coming into force of this Convention, no State may accede solely to the 1952 Convention.
4. Relations between States party to this Convention and States that are party only to the 1952 Convention, shall be governed by the 1952 Convention. However, any State party only to the 1952 Convention may, by a notification deposited with the Director-General, declare that it will admit the application of the 1971 Convention to works of its nationals or works first published in its territory by all States party to this Convention.

Article X

1. Each Contracting State undertakes to adopt, in accordance with its Constitution, such measures as are necessary to ensure the application of this Convention.
2. It is understood that at the date this Convention comes into force in respect of any State, that State must be in a position under its domestic law to give effect to the terms of this Convention.

Article XI

1. An Intergovernmental Committee is hereby established with the following duties:
   (a) to study the problems concerning the application and operation of the Universal Copyright Convention;

(b) to make preparation for periodic revisions of this Convention;
(c) to study any other problems concerning the international protection of copyright, in co-operation with the various interested international organizations, such as the United Nations Educational, Scientific and Cultural Organization, the International Union for the Protection of Literary and Artistic Works and the Organization of American States;
(d) to inform States party to the Universal Copyright Convention as to its activities.

2. The Committee shall consist of the representatives of eighteen States party to this Convention or only to the 1952 Convention.
3. The Committee shall be selected with due consideration to a fair balance of national interests on the basis of geographical location, population, languages and stage of development.
4. The Director-General of the United Nations Educational, Scientific and Cultural Organization, the Director-General of the World Intellectual Property Organization and the Secretary-General of the Organization of American States, or their representatives, may attend meetings of the Committee in an advisory capacity.

Article XII

The Intergovernmental Committee shall convene a conference for revision whenever it deems necessary, or at the request of at least ten States party to this Convention.

Article XIII

1. Any Contracting State may, at the time of deposit of its instrument of ratification, acceptance or accession, or at any time thereafter, declare by notification addressed to the Director-General that this Convention shall apply to all or any of the countries or territories for the international relations of which it is responsible and this Convention shall thereupon apply to the countries or territories named in such notification after the expiration of the term of three months provided for in Article IX. In the absence of such notification, this Convention shall not apply to any such country or territory.
2. However, nothing in this Article shall be understood as implying the recognition or tacit acceptance by a Contracting State of the factual situation concerning a country or territory to which this Convention is made applicable by another Contracting State in accordance with the provisions of this Article.

Article XIV

1. Any Contracting State may denounce this Convention in its own name or on behalf of all or any of the countries or territories with respect to which a notification has been given under Article XIII. The denunciation shall be made by notification addressed to the Director-General. Such denunciation shall also constitute denunciation of the 1952 Convention.

2. Such denunciation shall operate only in respect of the State or of the country or territory on whose behalf it was made and shall not take effect until twelve months after the date of receipt of the notification.

Article XV

A dispute between two or more Contracting States concerning the interpretation or application of this Convention, not settled by negotiation, shall, unless the States concerned agree on some other method of settlement, be brought before the International Court of Justice for determination by it.

Article XVI

1. This Convention shall be established in English, French and Spanish. The three texts shall be signed and shall be equally authoritative.
2. Official texts of this Convention shall be established by the Director-General, after consultation with the governments concerned, in Arabic, German, Italian and Portuguese.
3. Any Contracting State or group of Contracting States shall be entitled to have established by the Director-General other texts in the language of its choice by arrangement with the Director-General.
4. All such texts shall be annexed to the signed texts of this Convention.

Article XVII

1. This Convention shall not in any way affect the provisions of the Berne Convention for the Protection of Literary and Artistic Works or membership in the Union created by that Convention.
2. In application of the foregoing paragraph, a declaration has been annexed to the present Article. This declaration is an integral part of this Convention for the States bound by the Berne Convention on 1 January 1951, or which have or may become bound to it at a later date. The signature of this Convention by such States shall also constitute signature of the said declaration, and ratification, acceptance or accession by such States shall include the declaration, as well as this Convention.

Article XVIII

This Convention shall not abrogate multilateral or bilateral copyright conventions or arrangements that are or may be in effect exclusively between two or more American Republics. In the event of any difference either between the provisions of such existing conventions or arrangements and the provisions of this Convention, or between the provisions of this Convention and those of any new convention or arrangement which may be formulated between two or more American Republics after this Convention comes into force, the convention or arrangement most recently formulated shall prevail between the parties thereto. Rights in works acquired in

any Contracting State under existing conventions or arrangements before the date this Convention comes into force in such State shall not be affected.

Article XIX

This Convention shall not abrogate multilateral or bilateral conventions or arrangements in effect between two or more Contracting States. In the event of any difference between the provisions of such existing conventions or arrangements and the provisions of this Convention, the provisions of this Convention shall prevail. Rights in works acquired in any Contracting State under existing conventions or arrangements before the date on which this Convention comes into force in such State shall not be affected. Nothing in this Article shall affect the provisions of Articles XVII and XVIII.

Article XX

Reservations to this Convention shall not be permitted.

Article XXI

1. The Director-General shall send duly certified copies of this Convention to the States interested and to the Secretary-General of the United Nations for registration by him.
2. He shall also inform all interested States of the ratifications, acceptances and accessions which have been deposited, the date on which this Convention comes into force, the notifications under this Convention and denunciations under Article XIV.

Appendix Declaration relating to Article XVII

The States which are members of the International Union for the Protection of Literary and Artistic Works (hereinafter called the Berne Union') and which are signatories to this Convention,

Desiring to reinforce their mutual relations on the basis of the said Union and to avoid any conflict which might result from the co-existence of the Berne Convention and the Universal Copyright Convention,

Recognizing the temporary need of some States to adjust their level of copyright protection in accordance with their stage of cultural, social and economic development,

Have, by common agreement, accepted the terms of the following declaration:

(a) Except as provided by paragraph (b), works which, according to the Berne Convention, have as their country of origin a country which has withdrawn from the Berne Union after 1 January 1951, shall not be protected by the Universal Copyright Convention in the countries of the Berne Union;

(b) Where a Contracting State is regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, and has deposited with

the Director-General of the United Nations Educational, Scientific and Cultural Organization, at the time of its withdrawal from the Berne Union, a notification to the effect that it regards itself as a developing country, the provisions of paragraph (a) shall not be applicable as long as such State may avail itself of the exceptions provided for by this Convention in accordance with Article V*bis*;

(c) The Universal Copyright Convention shall not be applicable to the relationships among countries of the Berne Union in so far as it relates to the protection of works having as their country of origin, within the meaning of the Berne Convention, a country of the Berne Union.

Resolution concerning Article XI

The Conference for Revision of the Universal Copyright Convention,
Having considered the problems relating to the Intergovernmental Committee provided for in Article XI of this Convention, to which this resolution is annexed,
Resolves that:

1. At its inception, the Committee shall include representatives of the twelve States members of the Intergovernmental Committee established under Article XI of the 1952 Convention and the resolution annexed to it, and, in addition, representatives of the following States: Algeria, Australia, Japan, Mexico, Senegal and Yugoslavia.
2. Any States that are not party to the 1952 Convention and have not acceded to this Convention before the first ordinary session of the Committee following the entry into force of this Convention shall be replaced by other States to be selected by the Committee at its first ordinary session in conformity with the provisions of Article XI (2) and (3).
3. As soon as this Convention comes into force the Committee as provided for in paragraph 1 shall be deemed to be constituted in accordance with Article XI of this Convention.
4. A session of the Committee shall take place within one year after the coming into force of this Convention; thereafter the Committee shall meet in ordinary session at intervals of not more than two years.
5. The Committee shall elect its Chairman and two Vice-Chairmen. It shall establish its Rules of Procedure having regard to the following principles:
   (a) The normal duration of the term of office of the members represented on the Committee shall be six years with one-third retiring every two years, it being however understood that, of the original terms of office, one-third shall expire at the end of the Committee's second ordinary session which will follow the entry into force of this Convention, a further third at the end of its third ordinary session, and the remaining third at the end of its fourth ordinary session.
   (b) The rules governing the procedure whereby the Committee shall fill vacancies, the order in which terms of membership expire, eligibility for re-election, and election procedures, shall be based upon a balancing of the needs for continuity

of membership and rotation of representation, as well as the considerations set out in Article XI (3).

Expresses the wish that the United Nations Educational, Scientific and Cultural Organization provide its Secretariat.

In faith whereof the undersigned, having deposited their respective full powers, have signed this Convention.

Done at Paris, this twenty-fourth day of July 1971, in a single copy.

SOVIET COPYRIGHT LEGISLATION

Fundamentals of Civil Legislation of the USSR and the Union Republics

(Revised)*

[Excerpt]

SECTION IV. COPYRIGHT

Article 96. Works to which copyright applies

Copyright shall apply to works of science, literature or art regardless of form, purpose or value or of the manner of reproduction.

Copyright shall apply to works, whether published or unpublished, but available in any tangible form making it possible to reproduce the result of the author's creative activity (manuscript, drawing, picture, public recital or performance, film, mechanical or tape recording, etc.).

Article 97. Copyright in works published in the territory of the USSR and abroad

Copyright in works first published in the territory of the USSR, or not published but located in the territory of the USSR in any tangible form, shall be declared to lie with the author and his heirs regardless of their citizenship, as well as with other successors in title.

Copyright in works of citizens of the USSR which are first published or located in any tangible form in the territory of a foreign state shall be declared to lie with such citizens as well as with their successors in title.

Other persons shall be granted protection for works first published or present in any tangible form in the territory of a foreign state in conformity with international treaties or international arrangements to which the USSR is a party.

Foreign successors in title of authors who are citizens of the USSR enjoy protection of copyrights in Soviet territory in cases such copyrights have been assigned to them according to the procedure established by Soviet law.

Article 98. Rights of the author

The author has the right:

to publish, reproduce and circulate his work by any methods allowed by law under his own name, under an assumed name (pseudonym) or without a name (anonymously);

*As amended by the Decree of the Presidium of the Supreme Soviet of the USSR of February 21, 1973, "Amendments and Additions to the Fundamentals of Civil Legislation of the USSR and the Union Republics" (*Vedomosti Verkhovnogo Sovieta SSSR*, 1973, No. 9, Item 138).

to the integrity of his work;

to receive royalties for the use of his work by other persons, except in cases stipulated by law. Royalty rates are established by legislation of the USSR and the Union Republics.

The procedure of the assignment by an author who is a citizen of the USSR of the right of using his work in the territory of a foreign state is established by legislation of the USSR.

Article 99. Co-authorship

Copyright in a work produced jointly by two or more persons (collective work) belongs to the co-authors jointly, regardless of whether such a work forms one indissoluble whole or consists of parts each of which also has independent value. Each of the co-authors retains the copyright in his part of the collective work that is of independent value.

Article 100. Copyright of juristic persons. Copyright in a work produced as an official assignment

Copyright is recognized as belonging to juristic persons in cases and within limits established by legislation of the USSR and the Union Republics.

Copyright in a work produced as an official assignment by an author in the employ of a scientific or other organization shall belong to the author of the work. The procedure governing the use of such a work by the organization and also the cases of payment of remuneration to the author shall be established by legislation of the USSR and the Union Republics.

Article 101. Use of an author's work by other persons

Use of an author's work (including a translation into another language) by other persons is not permitted other than under a contract with the author or his successors in title, except in cases stipulated by law.

Standard contracts for the use of a work (author's contracts for publication, stage production, screening, and so on) are approved in the manner established by legislation of the USSR and the Union Republics.

Any terms of a contract concluded with an author which place him in an inferior position to that established in the law or in the standard contract are invalid and are replaced by the terms established by law or standard contract.

Article 102. Translation of a work into another language

Translation of a work into another language for the purpose of publication shall be subject to the consent of the author or his successors in title.

Competent authorities in the USSR may, by a procedure established by legislation of the USSR, authorize the translation of

a work into another language and its publication in compliance in relevant cases with the provisions of international treaties or international agreements to which the USSR is a party.

Copyright in a translation belongs to the translator.

Article 103. Use of a work without the author's consent and without payment of royalties

Allowed without the author's consent and without payment of royalties but with the obligatory mention of the name of the author whose work was used and of the source from which it is borrowed:

(1) use of another's published work to create a new, independent work, except the remaking of a narrative into a dramatic work or a scenario, and vice versa, as well as a dramatic work into a scenario, and vice versa;

(2) reproduction in scientific and critical works and in educational and political-enlightenment publications of individual published works of science, literature and art and excerpts thereof within limits established by legislation of the Union Republics;

(3) information in the periodic press, motion pictures, over the radio and television about published literary, scientific and artistic works;

(4) reproduction in motion pictures, radio and television broadcasts of public speeches, reports and published literary, scientific and artistic works;

(5) reproduction in newspapers of public speeches, reports and published literary, scientific and artistic works in the original and in translation;

(6) reproduction by any method except mechanical contact duplication of works of imitative art in places open to free visiting excluding exhibitions and museums;

(7) reproduction of printed publications for scientific, educational and enlightenment purposes without earning profits.

Article 104. Use of a work without the author's consent but with payment of royalties

Allowed without the author's consent but with mention of his name and with payment of royalties:

(1) public performance of published works; however, where no admission fee is charged, the author shall have the right to remuneration only in cases established by legislation of the Union Republics;

(2) recording for the purpose of public reproduction or dissemination of published works on film, record, tape or other device, with the exception of the use of works in motion pictures or over the radio or television (point 4 of Art. 103 of these Fundamentals);

(3) use by a composer of published literary works in order to create musical compositions with text;

(4) use of works of imitative art and also of photographic works in manufactured articles; in such cases it is not mandatory to mention the author's name.

Article 105. Term of copyright

Copyright shall be in effect throughout the author's life and for 25 years after his death, counting from January 1 of the year following that of the author's death.

Reduced copyright terms for photographic works and works of applied art may be established by legislation of the Union Republics. These terms may not be less than 10 years since the date of publication of such works through their reproduction.

Copyright shall pass to the author's heirs. Where the period of copyright has been reduced, it shall pass to the heirs for the remainder of the period still running on the day of the author's death.

The types of copyrights that do not pass to the author's heirs shall be established by legislation of the Union Republics.

Article 106. Purchase of a copyright by the state

Copyright in the publication, public performance or other use of a work may be compulsorily purchased by the state from the author or his heirs according to procedure established by legislation of the Union Republics.

Civil Code of the RSFSR

(Revised) *

[Excerpt]

SECTION IV. COPYRIGHT

Article 475. Works to which copyright applies

Copyright shall apply to works of science, literature or art regardless of form, purpose or value or of the manner of reproduction.

Copyright shall apply to works, whether published or unpublished, but available in any tangible form making it possible to reproduce the result of the author's creative activity (manuscript, drawing, picture, public recital or performance, film, mechanical or tape recording, etc.).

The following may be objects of copyright:

verbal works (speeches, lectures, reports, etc.);

written works (literary, scientific, etc.);

dramatic and musical-dramatic works, as well as musical works with or without text;

translations;

scenarios and scenario plans;

motion-picture and television films, and radio and television broadcasts;

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*As amended by the Decree of the Presidium of the Supreme Soviet of the RSFSR of March 1, 1974 (*Vedomosti Verkhovnogo Sovieta RSFSR*, 1974, No. 10, Item 286).

works of choreography and pantomime, the staging of which has been recorded in written or other form;

paintings, pieces of sculpture, architectural drawings, graphics, decorative and applied art, illustrations, sketches and drawings;

plans, outlines and models related to science or technology or to the staging of dramatic or musical-dramatic works;

geographical, geological and similar maps;

photographic works and works obtained through means analogous to photography;

works expressed with the help of mechanical or other technical recording;

other works.

Copyright shall apply to photographic works and works obtained through means analogous to photography if each copy of such a work indicates the name of the author and the place and year of publication.

Article 476. Published works

A work is considered published if it is printed, publicly performed, publicly shown, transmitted by radio or television, or communicated in some other manner to an indefinite circle of public.

Information about a work, with a summary of its contents, is not considered publication of the work, nor is the reproduction of a manuscript in cases specified by ordinances of the Council of Ministers of the RSFSR.

Article 477. Copyright in works published in the territory of the USSR

Copyright in works first published in the territory of the USSR, or not published but located in the territory of the USSR in any tangible form, shall be declared to lie with the author and his heirs regardless of their citizenship, as well as with other successors in title.

Article 478. Copyright in works published abroad

Copyright in works of citizens of the RSFSR and other Union Republics which are first published or located in any tangible form in the territory of a foreign state shall be declared to lie with such citizens as well as with their successors in title.

Other persons shall be granted protection for works first published or present in any tangible form in the territory of a foreign state in conformity with international treaties or international arrangements to which the USSR is a party. With the granting of protection in conformity with international treaties or international arrangements the fact of a work's publication in the territory of a foreign state is determined in accordance with the appropriate international treaty or international arrangement.

Foreign successors in title of authors who are citizens of the RSFSR and other Union Republics enjoy protection of copyrights

in the territory of the RSFSR in cases such copyrights have been assigned to them according to the procedure established by Soviet law.

Article 479. Rights of the author

The author has the right:

to publish, reproduce and circulate his work by any methods allowed by law under his own name, under an assumed name (pseudonym) or without a name (anonymously);

to the integrity of his work;

to receive royalties for the use of his work by other persons, except in cases stipulated by law.

The rates of an author's remuneration are established by the Council of Ministers of the RSFSR, except in cases in which legislation of the USSR places approval of such rates under the jurisdiction of the USSR.

In the absence of approved rates of an author's remuneration, the amount of remuneration payable to an author for the use of his work is determined by agreement of the parties.

The procedure for an author who is a citizen of the RSFSR or another Union Republic to transfer the right for use of his work in the territory of a foreign state is established by legislation of the USSR.

Article 480. Protection of the integrity of works and of the name of an author during his lifetime

In the publication, public performance or other use of a work any changes in the work itself, in its title or in the designation of the name of the author are prohibited without the author's consent.

Any publication of his work with illustrations, prefaces, appendices, commentaries or any other sort of explanatory material is likewise prohibited without the author's consent.

An author's consent, given at the conclusion of an author's contract, cannot be recalled unilaterally.

Article 481. Protection of the integrity of works of an author after his death

An author may, in the same manner in which the executor of a will is named (Art. 544), designate a person to whom he entrusts the protection of the integrity of his works after his death. This person exercises his powers for life.

In the absence of such a designation, protection of the integrity of the works of an author after his death is carried out by his heirs, as well as by the organizations to which the protection of authors' rights has been entrusted. These organizations likewise exercise protection of the integrity of an author's works if there are no heirs or if the heirs' copyright has expired (Art. 496).

Article 482. Co-authorship

Copyright in a work produced jointly by two or more persons (collective work) belongs to the co-authors jointly, regardless of

whether such a work forms one indissoluble whole or consists of parts each of which also has independent value.

Each of the co-authors retains the copyright in his part of the collective work that is of independent value.

A part of a collective work is considered to have independent value if it may be used independently of the other parts of the work.

Relationships between co-authors may be determined by their agreement. In the absence of such agreement, the copyright in a collective work is exercised jointly by all the co-authors, and remuneration is distributed among them in the manner provided by legislation of the USSR and by ordinances of the Council of Ministers of the RSFSR.

Article 483. Copyright in a work produced as an official assignment

Copyright in a work produced as an official assignment by an author in the employ of a scientific or other organization shall belong to the author of the work.

The procedure governing the use of such a work by the organization and also the cases of payment of remuneration to the author shall be established by legislation of the USSR and by ordinances of the Council of Ministers of the RSFSR.

Article 484. Copyright of juristic persons

Copyright is recognized as belonging to juristic persons in cases and within limits established by legislation of the USSR and by this Code. These provisions do not extend to acquisition of copyright under contract by juristic persons.

Article 485. Copyright of an organization in periodicals and other publications

Organizations which independently or through any publishing house publish scientific collections, encyclopaedic dictionaries, journals or other periodical literature have copyrights in such publications as a whole.

The authors of works included in such publications have copyrights in their work.

Article 486. Copyright in motion-picture and television films and radio and television broadcasts

Copyright in a motion-picture or television film belongs to the enterprise which has made the film.

Copyright in an amateur motion-picture or television film belongs to its author or co-authors.

The author of the scenario, the composer, the director, the chief cameraman, the artistic director and the authors of other creations which constitute component parts of a motion-picture or television film each has a copyright in his own work.

Copyright in a radio or television broadcast belongs to the broadcasting radio or television organizations, while the copyrights in the works included in the broadcast belong to the authors of such works.

Article 487. Copyright of the compiler of a collection

Copyright in a collection of works which are not themselves objects of copyright, such as laws, judicial decisions, other official documents, folk works of unknown authorship, and ancient writings, as well as other works which are not protected by copyright, belongs to the compiler of the collection, if he has subjected the material included in the collection to independent treatment or systematization.

Such a right also belongs to a citizen who has subjected to independent treatment individual works of the type indicated.

Such a right does not prevent other citizens from publishing the same works, if they have systematized them or treated them independently.

The compiler of a collection who treats or systematizes in such collection works which are the objects of copyrights of other persons has a copyright in the collection if he respects the rights of the authors of the works.

Article 488. Use of an author's work by other persons

Use of an author's work (including a translation into another language) by other persons is not permitted other than under a contract with the author or his successors in title, except in cases stipulated by law.

Article 489. Translation of a work into another language

Translation of a work into another language for the purpose of publication shall be subject to the consent of the author or his successor in title.

Competent authorities in the USSR may, by a procedure established by legislation of the USSR, authorize the translation of a work into another language and its publication in compliance in relevant cases with the provisions of international treaties or international agreements to which the USSR is a party.

Article 490. Copyright of a translator

Copyright in a translation belongs to the translator.

Article 491. Right of an author to compensation for use of his work in a translation into another language

Right of compensation for use of a work in a translation into another language belongs to the author of the original in all cases, except those indicated by law.

Article 492. Use of a work without the author's consent and without payment of royalties

Allowed without the author's consent and without payment of royalties but with the obligatory mention of the name of the author whose work was used and of the source from which it is borrowed:

(1) use of another's published work to create a new, independent work, except the remaking of a narrative into a dramatic work or a scenario, and vice versa, as well as a dramatic work into a scenario, and vice versa;

(2) reproduction in scientific and critical works and in educational and political-enlightenment publications of individual published works of science, literature and art and excerpts thereof. Reproduction in the form of quotations may be permitted within limits justified by the purpose of the edition, and reproduction in a different form, in collections in particular, to the total extent not exceeding one author's sheet from works of one author;

(3) information in the periodic press, motion pictures, over the radio and television about published literary, scientific and artistic works, including in the form of annotations, abstracts, reviews, and other documentary-information forms;

(4) reproduction in motion pictures, radio and television broadcasts of public speeches, reports and published literary, scientific and artistic works. Reproduction is also considered to be broadcasts over the radio and television of works being performed in public directly from the place where they are being performed;

(5) reproduction in newspapers of public speeches, reports and published literary, scientific and artistic works in the original and in translation;

(6) reproduction by any method except mechanical contact duplication of works of imitative art in places open to free visiting excluding exhibitions and museums;

(7) reproduction of printed publications for scientific, educational and enlightenment purposes without earning profits.

Article 493. Use of works for the satisfaction of personal needs

Reproduction or other use of the published works of another for the satisfaction of personal needs is permitted without the author's consent and without payment of royalties.

Article 494. Copyright of a person who has used the work of another for the creation of a new work

A person who has used the work of another for the creation of a new work (point 1 of Art. 492) has a copyright in the work which he creates.

This right does not prevent other persons from using the same work for the creation of new works.

Article 495. Use of a work without the author's consent but with payment of royalties

Allowed without the author's consent but with mention of his name and with payment of royalties:

(1) public performance of published works; however, where no admission fee is charged, the author shall have the right to remuneration only in cases established by the Council of Ministers of the RSFSR;

(2) recording for the purpose of public reproduction or dissemination of published works on film, record, tape or other device, with the exception of the use of works in motion-pictures or over the radio or television (point 4 of Art. 492).

(3) use by a composer of published literary works in order to create musical compositions with text; in such cases remuneration is paid to the author of the text by the organization using such composition;

(4) use of works of imitative art and also of photographic works in manufactured articles; in such cases it is not mandatory to mention the author's name.

Article 496. Term of copyright

Copyright shall be in effect throughout the author's life and for 25 years after his death, counting from January 1 of the year following that of the author's death.

Copyright is inheritable. The author's right to a name and the right to the integrity of a work, however, cannot be inherited.

After the author's death his name and the integrity of his work are protected under the provisions of Articles 480 and 481 of this Code.

Article 497. Term of copyright in a collective work

Copyright in a collective work shall be in effect throughout the entire life of each of the authors and is inheritable.

The heirs of each co-author have copyright for 25 years, counting from January 1 of the year following that of the author's death.

Article 498. Duration of a copyright which belongs to an organization

Copyright which belongs to an organization shall be in effect indefinitely. In the event of the reorganization of an organization, its copyrights pass to its successor, and in the event of its liquidation, to the state.

Article 499. Protection of the personal non-property rights of an author

When a person uses the work of another without a contract with the author or his successors in title (Art. 488), or fails to observe the conditions for using a work without consent of the author (Art. 492 and 495), or violates the integrity of a work (Art.

480) or other personal non-property rights of an author, the author, or after his death his successors in title or such other persons as are indicated in Article 481 of this Code, may demand the re-establishment of the violated right (the making of appropriate corrections, and announcement in the press or by some other means concerning the violation which had been committed), or the prohibition of publication of the work or the termination of its distribution.

Article 500. Protection of an author's property rights in cases where his copyright is violated

If losses are inflicted on an author or his successors in title (Art. 219) by a violation of copyright, then regardless of the requirements of Article 499 of this Code, the author or his successors in title have the right to demand compensation for the losses.

Article 501. Purchase of a copyright by the state

Copyright in the publication, public performance or other use of a work may be compulsorily purchased by the state from the author or his heirs by special ordinances issued in each individual case by the Council of Ministers of the RSFSR.

The manner and conditions of use of a work the rights to which have been purchased are prescribed by the Council of Ministers of the RSFSR.

Article 502. Declaration of works to be property of the state

A work for which the term of protection has expired may be declared property of the state by decision of the Council of Ministers of the RSFSR. The manner and conditions of use of works which have been declared to be property of the state are prescribed by the Council of Ministers of the RSFSR.

Article 503. An author's contract and its types

An author or his successors in title have the right to conclude an author's contract with the appropriate organization for the purpose of using a work.

Author's contracts may be of two types:

an author's contract to transfer a work for use;

a license contract.

Under the author's contract for transferring a work for use, the author or his successor either transfers, or the author obligates himself to create and transfer at a time established by the contract, his work to an organization for use by the method stipulated in the contract, and the organization obligates itself to accomplish or begin such use at a time established by the contract (Art. 510), and also to pay compensation to the author or his successor in title except in cases indicated by law.

Under a license contract the author or his successor in title grants an organization the right to use his work by means of translation into another language or arrangement in particular

within the limits and period specified in the contract, while the organization undertakes to pay compensation for the transfer of the right or for the use of the work in a form specified in the contract unless otherwise provided by the law of the USSR or RSFSR or agreement between the parties.

Article 504. Forms of author's cession contracts for the use of a work

Author's cession contracts for the use of a work are as follows:

a contract for publication or republication of an original work (publishing contract);

a contract for public performance of an unpublished work (production contract); a production contract providing for the payment of a lump-sum compensation may be concluded by the author for one and the same work with only one organization;

a contract for the use of an unpublished work in a cinematographic or television film (scenario contract); in a radio or television broadcast;

a contract for the creation of a work of imitative art for the purpose of its public exhibition (artistic contract);

a contract for the use of an unpublished work of decorative and applied art in industry;

other cessions for the use of literary, scientific and artistic works by any other means.

Article 505. Form of an author's contract

Author's contract must be concluded in written form (Art. 46).

Written form is not required for a contract for the publication of a work in a periodical or in an encyclopaedic dictionary.

Article 506. Standard author's contracts

Standard author's contracts are approved by agreement between interested governmental departments and creative unions in the manner prescribed by the Council of Ministers of the RSFSR except in cases in which legislation of the USSR places approval of such contracts under the jurisdiction of the USSR.

Author's contract may contain terms not provided in the standard contract. Any terms of a contract concluded with an author which place him in an inferior position to that established in the law or in the standard contract are invalid and are replaced by the terms established by law or standard contract.

Article 507. Amount of remuneration of an author under an author's contract

The amount of remuneration paid under an author's contract is established by agreement of the parties, within the limits of approved rates if such rates exist (Art. 479).

Article 508. Transfer and approval of a work

Under an author's contract transferring a work for use, the author is obliged to fulfil the work ordered from him in conformity with conditions of the contract and to transfer it to the organization at the time set by the contract and in the manner stipulated.

An organization is required to inform an author in writing no later than the time established in the standard contract either of approval of a work which has been delivered to it under an author's contract, or of its refusal on grounds provided by the contract, or of the need for making improvements in the work, with an exact description of the nature of the changes required, within the limits of the terms of the contract. If written notice is not sent to the author within the period established by the contract, the work is considered approved by the organization.

Article 509. Limitation on the use by third parties of a work on which a contract has been concluded

Under an author's contract concerning transfer of a work for use, an author does not have the right, without the written consent of the other party, to transfer to third parties the work indicated in the contract, or a part thereof, for use by the very same method as is stipulated by the contract, except in cases covered by standard contracts. The term of such a limitation is established by standard contracts but cannot exceed three years from the date the organization approves the work. Standard contracts may cover cases where an author does not have the right to transfer a work for use also by other methods than those stipulated by the contract.

Article 510. Obligation of an organization to use a work

Under an author's contract transferring a work for use, the organization is obligated to accomplish or begin to use the work by the method stipulated in the contract within the period set by the same contract, such period not to exceed two years from the date it has approved the work. This obligation does not extend to an organization which has concluded a scenario contract or an artistic contract.

Standard contracts may provide for shorter maximum periods than those indicated in this Article, taking into account the size of the work and the nature of its use.

Article 511. Liability of an author for breach of contract

An author is obliged to return a royalty received under a contract transferring a work for use if the contract is cancelled by the organization because of the fact that the author, through his own fault, did not transfer to it the work at the time set by the contract; that he did not fulfil the ordered work in conformity with contractual conditions, or did so carelessly; that he refused to make amendments suggested to him under the procedure and within the limits set by the contract; or that he violated his obligation to perform

the work personally or violated the rules of Article 509 of this Code.

If an organization refuses a work on the grounds provided by the contract (Art. 508) and fails to prove in court a lack of conscientiousness on the part of the author in performing the work, the author retains the remuneration received under the contract either in full or in part, as determined by the standard contracts. Such part may not be less than 25 per cent of the total amount under the contract.

Article 512. Liability of an organization for breach of contract

If by the date set by a contract which transfers a work for use (Art. 510) an organization will not accomplish the use or will not begin to use a work approved by it, it is obliged, on demand by the author, to pay him the stipulated fee in full. In this case the author also has the right to reject the contract and demand the return of copies of the work transferred under the contract. The organization is relieved of the responsibility to pay to the author that part of the fee which he was to have received after the work had begun to be used, if it can prove that it was not able to use the work for circumstances lying with the author.

Article 513. Transfer of the right of ownership in a work of imitative art created under an order

A work of imitative art created under an order is transferred to the ownership of the customer, unless otherwise provided by the contract. The author retains the copyright in the work.

The owner of a work has a right to place it on public exhibition without payment of additional remuneration to the author.

Article 514. Protection of the interests of a citizen depicted in a work of imitative art

Publication, reproduction and distribution of a work of imitative art in which a person is depicted are permitted only with the consent of the person so depicted or, after his death, with the consent of his children and surviving spouse. Such consent is not required if the publication, reproduction or distribution is carried out in the interests of the state or the public, or if the person depicted has posed for the author for payment.

Article 515. Procedure for the use of architectural, engineering and other technical plans drawn under an order

Architectural, engineering and other technical plans, drawings and sketches drawn under an order of an organization may be used by such customer for its needs, transferred by it to the use of third persons, or reproduced in print without payment of additional remuneration to the author.

Article 516. Author's license contract granting the right to use a work by translating it into another language or by its remaking

The terms of an author's license contract for granting the right of using a work by means of translation into another language or arrangement into a work in a different genre (in particular, of a narrative into a dramatic work or a scenario, and vice versa) are determined by the parties during its conclusion unless otherwise prescribed by legislation of the USSR and RSFSR.

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